

DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY

Doctors Medical Center Management Authority, JPA Board

**Wednesday, January 27, 2010 – 3:00 pm
Doctors Medical Center - Auditorium
2000 Vale Road, San Pablo, CA 94806**

Governing Board

*Supervisor John Gioia, Chair
Sharon Drager, M.D.
Pat Godley
Supervisor Gayle B. Uilkema
Bill Walker, M.D.
Beverly Wallace
Eric Zell*

AGENDA

1. Call to Order and Roll Call
2. Approve Minutes of Board Meeting of November 24, 2009 (*No December Board Meeting*)
3. Public Comment
[At this time persons in the audience may speak on any items not on the Agenda which are within the jurisdiction of the Doctors Medical Center Management Authority.]
4. Presentation and Acceptance of the December 2009 Financial Statements
5. Approval of Emergency Department Coding System Contract with Lynx Medical System, Inc.
6. Recommendation to the District Board to approve contract with Public Accounting firm of Moss Adams LLP of New Financial Statement Auditors
7. Recommendation to the District Board Lease of IV Pumps and Process with Universal Hospital Services (UHS)
8. Quality Report
9. CEO Report

Closed Session

10. Conference with Labor Negotiators (pursuant to Government Code Section 554957.6)
Agency Negotiators: Charm Patton, Vice President of Human Resources
Employee Organizations: California Nurse Association
11. Discussion involving trade secrets pursuant to H & S Code Section 32106. Discussion will concern new programs, services, and facilities.

Open Session

12. Report of Reportable Action(s) Taken During Closed Session, if any.
13. Adjournment

**NOVEMBER 24, 2009
MINUTES**

TAB 2

DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY

Doctors Medical Center Management Authority
Governing Board Meeting
November 24, 2009 – 3:30 pm
Doctors Medical Center - Auditorium
2000 Vale Road, San Pablo, CA 94806

Governing Board
Supervisor John Gioia, Chair
Sharon Drager, M.D.
Pat Godley
Supervisor Gayle B. Uilkema
Bill Walker, M.D.
Beverly Wallace
Eric Zell

Minutes

1. Call to Order and Roll Call – 3:35 p.m.

Quorum was established; roll was called.

Voting Members: Supervisor John Gioia, Chair
Eric Zell
Beverly Wallace
Sharon Drager, M.D.
Pat Godley
Bill Walker, M.D.

Absent: Supervisor Gayle B. Uilkema

2. Approval Minutes of Board Meeting of October 28, 2009

The motion made by Supervisor Gioia and seconded by Director Wallace to approve the minutes of the October 28, 2009 Board meeting was passed unanimously.

3. Public Comment

There were no public comments.

4. Approval of Capital Expenditure

a. Patient Handling

Mr. Reid, CFO, sought approval to execute on behalf of Doctors Medical Center (DMC), to sign a 36 month lease with US Capital Corporation at a monthly cost of \$9,109 to lease Patient Handling Equipment and a annual cost of \$330,000. The program will provide state of the art patient lift equipment, which will improve patient and employee safety.

The motion made by Supervisor Gioia and seconded by Dr. Bill Walker, to approve and authorize Rick Reid, CFO, to execute on behalf of Doctors Medical Center to lease Patient Lift Equipment at a total cost of \$330,000 passed unanimously.

5. Presentation and Acceptance of October 2009 Financial Statements

Mr. Reid, CFO, reported October 2009 net income was a gain of \$70,000 on a budget of \$59,000; the average length of stay increased to 4.64 days and the average daily census was 72. He reported the total cash balance is \$7,586,000 and there are 21 days of cash on hand.

The motion made by Supervisor Gioia and seconded by Dr. Walker to accept the financials for October 2009 passed unanimously.

6. CEO and Quality Report – Joseph Stewart, President/CEO

- Mr. Stewart provided an update on Seismic Compliance Planning. He began with an overview of Structural Performance Category (SPC) Definitions and of DMC's Campus', which was a total of 7 buildings, as classified by OSHPD. DMC submitted to OSHPD an application to participate in the HAZUS Reassessment Program, which is a state-of-the-art methodology, to reassess the seismic risk.
- Mr. Stewart shared an article in the San Francisco Business Times, titled "Pressure builds for seismic deadline."
- Mr. Stewart reported DMC's Administrative team met with Contra Costa Regional Medical Center's (CCRMC) CEO, Anna Roth, Diane Dunn-Bowe, CEO of Ambulatory Care, and Dr. William Walker on October 23rd. We took this opportunity to meet regarding quality improvement in surgical services and participated at their Kazen Workshop, reporting out sessions and looking for improvements. We established a relationship and had the opportunity to meet our counterpart and shared ideas.
- Mr. Stewart announced DMC's Employee Christmas Party, Friday, December 11th, 6:30 PM at His Lordship in Berkeley. This is hosted by the Employee Association and supported by the Medical Staff, as well as the Employee Association.

The JPA Board adjourned at 4:00 for a joint session with the District regarding the 2010 Budget.

**FINANCIAL STATEMENTS
DECEMBER 2009**

TAB 4



Board Presentation

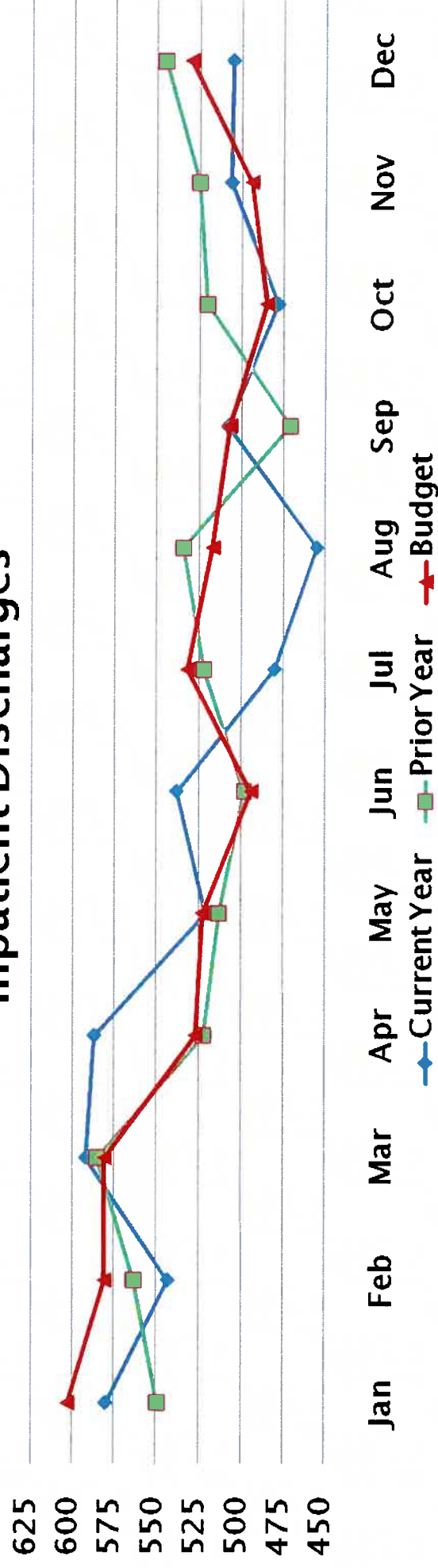
December 2009 Financial Report



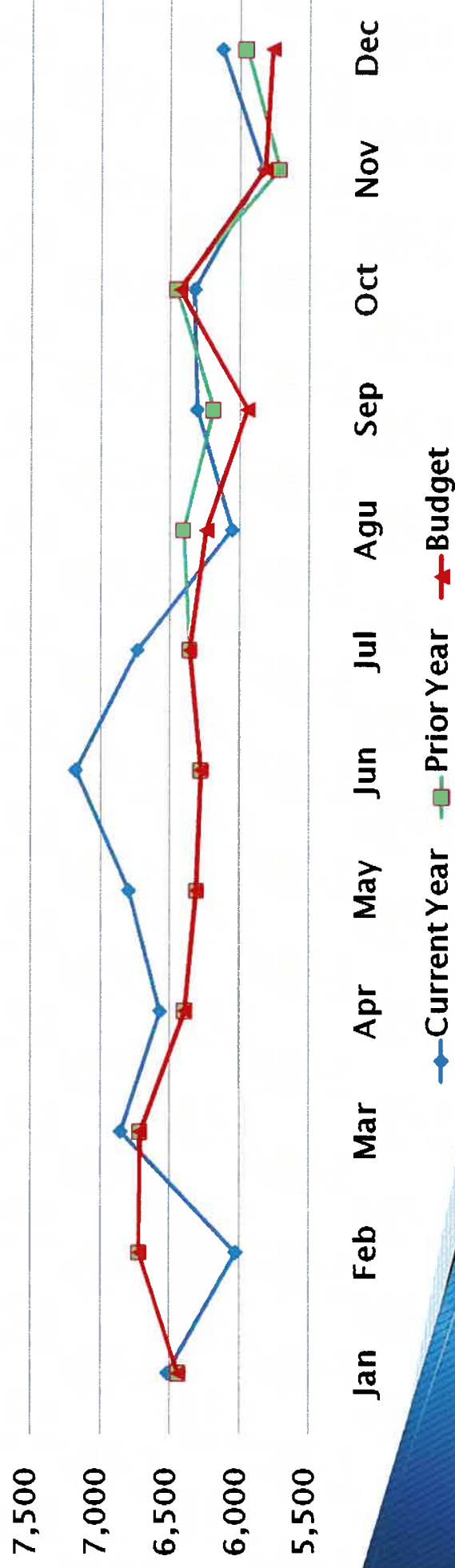
Patient Activity For the Period Ending December 31, 2009

Actual M.T.D.	Budget M.T.D.	Variance		Actual Y.T.D.	Budget Y.T.D.	Variance
505	530	(25)	Inpatient Discharges	6,293	6,374	(81)
6,132	5,769	363	Outpatient Visits	74,112	75,451	(1,339)

Inpatient Discharges



Outpatient Visits



Statement of Activity – Summary

For the Period Ending

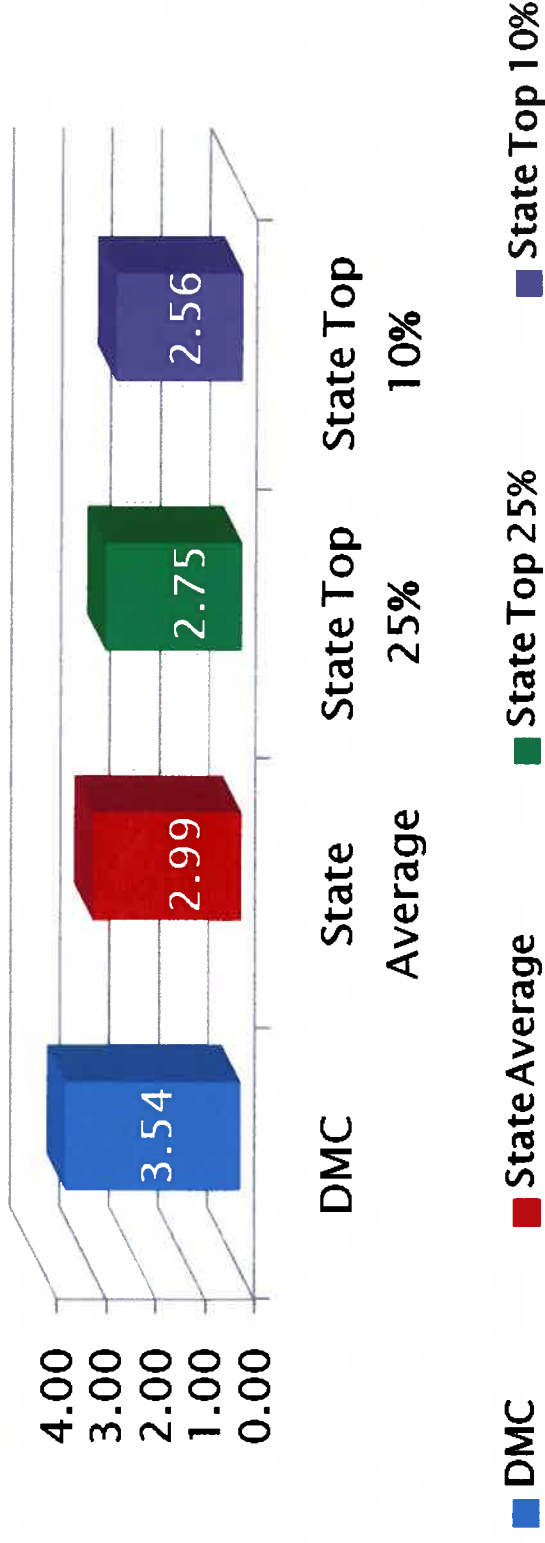
December 31, 2009

(Thousands)

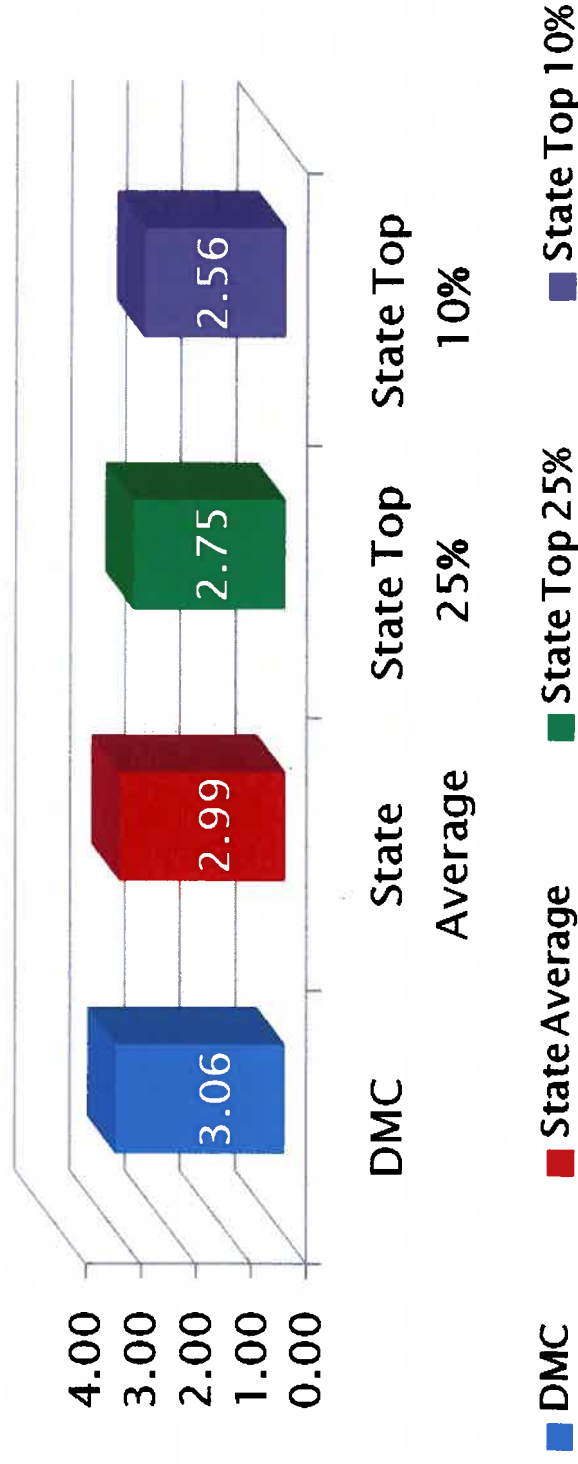
Actual M.T.D.	Budget M.T.D.	Variance		Actual Y.T.D.	Budget Y.T.D.	Variance
\$10,019	\$9,703	\$316	Net Operating Revenues	\$122,217	\$118,861	\$3,356
\$11,477	\$10,909	(\$568)	Total Operating Expenses	\$137,484	\$133,927	(\$3,557)
(\$1,458)	(\$1,206)	(\$252)	Income/(Loss) From Operations	(\$15,267)	(\$15,066)	(\$201)
\$1,493	\$1,615	(\$122)	Income from Other Sources	\$24,640	\$24,392	\$248
\$35	\$409	(\$374)	Net Income/(Loss)	\$9,373	\$9,326	\$47
0.3%	4.2%	(3.9%)	Net Income Percentage	7.7%	7.8%	(0.1%)
			California Benchmark Average	4.2%		
			Top 25%	10.5%		
			Top 10%	14.5%		

Length of Stay Comparison Adjusted For Case Mix Index

December



Year to Date



Cash Position

December 31, 2009

(Amounts in Thousands)

	December 31, 2009	December 31, 2008
Unrestricted Cash	\$4,005	\$7,218
Restricted Cash	\$8,875	\$8,566
Total Cash	\$12,880	\$15,784
Days Unrestricted Cash	11	18
Days Restricted	24	23
Total Days of Cash	35	41
California Benchmark Average	34	
Top 25%	82	
Top 10%	183	

Questions

**WEST CONTRA COSTA HEALTHCARE DISTRICT
DOCTORS MEDICAL CENTER**

INCOME STATEMENT

December 31, 2009

(Amounts in Thousands)

	CURRENT PERIOD			PRIOR YEAR		
	ACTUAL	BUDGET	VAR	VAR %	ACTUAL	ACTUAL
1	9,912	9,624	288	3.0%	10,605	116,112
2	107	79	28	35.4%	98	1,117
3	10,019	9,703	316	3.3%	10,703	117,229
OPERATING REVENUE						
Net Patient Service Revenue						
Other Revenue						
Total Operating Revenue	121,114	117,897	3,217	2.7%	116,112	
	1,103	964	139	14.4%	1,117	
	122,217	118,861	3,356	2.8%	117,229	
OPERATING EXPENSES						
Salaries & Wages	65,293	62,982	(2,311)	-3.7%	60,379	
Employee Benefits	26,920	26,996	76	0.3%	27,574	
Professional Fees	9,778	8,305	(1,473)	-17.7%	13,227	
Supplies	19,187	19,923	736	3.7%	19,800	
Purchased Services	7,269	7,166	(103)	-1.4%	6,547	
Rentals & Leases	1,185	1,092	(93)	-8.5%	1,070	
Depreciation & Amortization	3,501	3,755	254	6.8%	3,502	
Other Operating Expenses	4,351	3,708	(643)	-17.3%	3,915	
Total Operating Expenses	137,484	133,927	(3,557)	-2.7%	136,014	
Operating Profit / Loss	(15,267)	(15,066)	(201)	1.3%	(18,785)	
NON-OPERATING REVENUES (EXPENSES)						
Other Non-Operating Revenue	17,000	17,000	-	0.0%	16,500	
District Tax Revenue	9,033	9,037	(4)	0.0%	8,955	
Investment Income	119	331	(212)	-64.0%	391	
Less: Interest Expense	(1,512)	(1,976)	464	-23.5%	(1,627)	
Total Net Non-Operating	24,640	24,392	248	1.0%	24,219	
Income Profit (Loss)	9,373	9,326	47	0.5%	5,434	
Profitability Ratios:						
Operating Margin %	-12.5%	-12.7%			-16.0%	
Profit Margin %	7.7%	7.8%			4.6%	

December 31, 2009

22	1,914	1,963	48	2.5%	1,990	SWB / APD	2,013	1,941	(71)	-3.7%	1,905
23	66.8%	66.7%			68.3%	SWB / Total Operating Expenses	67.1%	67.2%			64.7%
24	2,864	2,941	76	2.6%	2,912	Total Operating Expenses / APD	3,001	2,889	(111)	-3.9%	2,946
25	36,151	37,794	(1,643)	-4.3%	33,847	I/P Gross Charges	450,172	475,860	(25,688)	-5.4%	448,908
26	17,861	16,698	1,163	7.0%	16,438	O/P Gross Charges	230,449	209,735	20,714	9.9%	219,262
27	<u>54,012</u>	<u>54,492</u>	<u>(480)</u>	<u>-0.9%</u>	<u>50,285</u>	<u>Total Gross Charges</u>	<u>680,621</u>	<u>685,595</u>	<u>(4,974)</u>	<u>-0.7%</u>	<u>668,170</u>

Payor Mix (IP and OP)

28	37%	42%	-6%		38%	Medicare %	38%	42%	-4%		41%
29	17%	14%	3%		14%	Medi-Cal %	16%	14%	2%		14%
30	15%	15%	0%		16%	Managed Care HMO / PPO %	16%	15%	0%		15%
31	12%	9%	3%		11%	Medicare HMO %	11%	9%	1%		10%
32	7%	5%	2%		6%	Medi-Cal HMO %	6%	5%	1%		6%
33	0%	0%	0%		0%	Commercial %	0%	0%	0%		0%
34	1%	2%	-1%		1%	Worker's Comp %	1%	2%	-1%		2%
35	4%	4%	0%		5%	Other Government %	4%	4%	0%		6%
36	9%	8%	1%		7%	Self Pay / Charity %	8%	8%	0%		6%

STATISTICS

37	498	530	(32)	-6.0%	544	Admissions	6,283	6,374	(91)	-1.4%	6,376
38	505	530	(25)	-4.7%	545	Discharges	6,293	6,374	(81)	-1.3%	6,347
39	2,682	2,573	109	4.2%	2,753	Patient Days	30,305	32,174	(1,869)	-5.8%	31,023
40	86.5	83.0	3.5	4.2%	88.8	Average Daily Census (ADC)	83.0	88.1	(5.1)	-5.8%	84.8
41	5.31	4.85	(0.46)	-9.4%	5.05	Average Length of Stay (LOS)	4.82	5.05	0.23	4.6%	4.89
42	31	31			31	Days in Month	365	365			366
43	755	764	(10)	-1.3%	810	Adjusted Discharges (AD)	9,514	9,183	331	3.6%	9,447
44	4,007	3,710	297	8.0%	4,090	Adjusted Patient Days (APD)	45,819	46,355	(536)	-1.2%	46,176
45	129	120	10	8.0%	132	Adjusted ADC (AADC)	126	127	(1)	-1.2%	126
46	91	87	4	4.6%	98	Inpatient Surgeries	1,117	1,295	(178)	-13.7%	1,211
47	89	131	(42)	-32.1%	102	Outpatient Surgeries	1,241	1,446	(205)	-14.2%	1,228
48	<u>180</u>	<u>218</u>	<u>(38)</u>	<u>-17.4%</u>	<u>200</u>	<u>Total Surgeries</u>	<u>2,358</u>	<u>2,741</u>	<u>(383)</u>	<u>-14.0%</u>	<u>2,439</u>

December 31, 2009

49	3,223	3,016	207	6.9%	3,235	ED Outpatient Visits	35,669	38,931	(3,262)	-8.4%	39,675
50	2,820	2,622	198	7.6%	2,622	Ancillary Outpatient Visits	37,202	35,074	2,128	6.1%	35,074
51	89	131	(42)	-32.1%	102	Outpatient Surgeries	1,241	1,446	(205)	-14.2%	1,228
52	<u>6,132</u>	<u>5,769</u>	<u>363</u>	<u>6.3%</u>	<u>5,959</u>	<u>Total Outpatient Visits</u>	<u>74,112</u>	<u>75,451</u>	<u>(1,339)</u>	<u>-1.8%</u>	<u>75,977</u>
53	443	402	41	10.2%	483	Emergency Room Admits	5,282	5,094	188	3.7%	5,254
54	13.7%	13.3%		14.9%		% of Total E/R Visits	14.8%	13.1%			13.2%
55	89.0%	75.8%		88.8%		% of Acute Admissions	84.1%	79.9%			82.4%
56	633	540	93	17.2%	521	Worked FTE	610	577	34	5.8%	558
57	704	619	85	13.7%	667	Paid FTE	693	658	35	5.3%	649
58	4.90	4.51	0.38	8.5%	3.95	Worked FTE / AADC	4.86	4.54	0.32	7.1%	4.43
59	5.45	5.17	0.27	5.3%	5.06	Paid FTE / AADC	5.52	5.18	0.34	6.5%	5.14
60	2,474	2,594	(121)	-4.6%	2,593	Net Patient Revenue / APD	2,643	2,543	100	3.9%	2,515
61	13,479	14,689	(1,210)	-8.2%	12,295	I/P Charges / Patient Days	14,855	14,790	65	0.4%	14,470
62	2,913	2,894	18	0.6%	2,759	O/P Charges / Visit	3,109	2,780	330	11.9%	2,886
63	1,353	1,389	16	1.2%	1,276	Salary Expense / APD	1,425	1,359	(66)	-4.9%	1,308

WEST CONTRA COSTA HEALTHCARE DISTRICT
DOCTORS MEDICAL CENTER
BALANCE SHEET
December 31, 2009
(Amounts in \$1,000)

ASSETS	Current Month	Dec. 31, 2008	LIABILITIES	Current Month	Dec. 31, 2008
64 Cash	4,005	7,218	90 Current Maturities of Debt Borrowings	3,633	3,526
65 Net Patient Accounts Receivable	16,150	8,647	91 Accounts Payable and Accrued Expenses	11,927	8,672
66 Other Receivables	5,352	5,125	92 Accrued Payroll and Related Liabilities	8,784	8,110
67 Inventory	2,034	1,886	93 Deferred District Tax Revenue	3,028	3,180
68 Prepaid Expenses and Deposits	717	993	94 Estimated Third Party Payor Settlements	3,132	646
69 TOTAL CURRENT ASSETS	28,258	23,869	95 Total Current Liabilities	30,504	24,134
70 Assets With Limited Use	8,875	8,566	Other Liabilities		
Property Plant & Equipment			96 Other Deferred Liabilities	0	3,327
71 Land	12,090	12,090	97 Chapter 9 Bankruptcy	1,771	5,148
72 Bldg/Leasehold Improvements	34,390	33,304	Long Term Debt		
73 Capital Leases	10,926	10,926	98 Notes Payable - Secured	25,966	28,351
74 Equipment	32,889	30,651	99 Capital Leases	2,973	4,139
75 CIP	1,290	642	100 Less Current Portion LTD	-3,633	-3,526
76 Total Property, Plant & Equipment	91,585	87,613	101 Total Long Term Debt	25,306	28,964
77 Accumulated Depreciation	-47,543	-44,295			
78 Net Property, Plant & Equipment	44,042	43,318	102 Total Liabilities	57,581	61,573
79 Intangible Assets	586	627	EQUITY		
			103 Retained Earnings	14,807	-3,271
			104 Year to Date Profit / (Loss)	9,373	18,078
			105 Total Equity	24,180	14,807
80 Total Assets	81,761	76,380	106 Total Liabilities & Equity	81,761	76,380
81 Current Ratio (CA/CL)	0.93	0.99			
82 Net Working Capital (CA-CL)	(2,246)	(265)			
83 Long Term Debt Ratio (LTD/TA)	0.31	0.38			
84 Long Term Debt to Capital (LTD/(LTD+TE))	0.51	0.66			
85 Financial Leverage (TA/TE)	3.4	5.2			
86 Quick Ratio	0.66	0.66			
87 Unrestricted Cash Days	11	19			
88 Restricted Cash Days	24	22			
89 Net A/R Days	56	28			

**APPROVAL OF EMERGENCY
DEPARTMENT CODING SYSTEM
CONTRACT WITH LYNX MEDICAL
SYSTEM, INC.**

TAB 5

**DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY
AGENDA ITEM REQUEST / RECOMMENDATION
DOCUMENTATION FORM**

TO: DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY

FROM: Richard S. Reid, CFO

DATE: January 27, 2010

SUBJECT: Emergency Room Coding Software

REQUEST / RECOMMENDATION(S): Approve and authorize the Chief Financial Officer, to execute on behalf of DMC, a 3 year contract with Lynx Medical System, Inc to provide emergency room coding system for more appropriate level coding.

FISCAL IMPACT: \$ 580,000 increase in reimbursement, net of software fees per year. This was not included in the 2010 operating budget. The cost is \$4.28 per emergency room encounter, or an estimated \$180,000 per year for 3 years. Total contract cost is \$540,000.

STRATEGIC IMPACT: The use of the Lynx coding system will allow DMC to use the same system that is used in over 500 hospitals nationwide.

REQUEST / RECOMMENDATION REASON, BACKGROUND AND JUSTIFICATION:

The Lynx coding system is used in over 500 hospitals. It will give DMC the ability to charge and code emergency room levels more appropriately and consistently.

Presentation Attachments: Yes X No

Requesting Signature: _____ Date: / /

SIGNATURE(S):

Action of Board on / / Approved as Recommended Other

Vote of Board Members:

 Unanimous (Absent)

Ayes: Noes:

Absent: Abstain:

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD ON THE DATE SHOWN.

Contact Person: Richard Reid

Attested _____
Eric Zell, Management Authority Board Secretary

Cc:
Accounts Payable
Contractor
CFO/Controller
Requestor

LYNX MEDICAL SYSTEMS, INC.

APPLICATION SERVICE PROVIDER AGREEMENT

THIS APPLICATION SERVICE PROVIDER AGREEMENT ("Agreement"), effective as of _____ ("Effective Date"), is entered into by and between LYNX MEDICAL SYSTEMS, INC. ("LYNX"), a Washington corporation, having a principal place of business at 15325 SE 30th Place, Suite 200, Bellevue, Washington 98007-6595 and **Doctors Medical Center San Pablo** ("Client"), having a principal place of business at 2000 Vale Road, San Pablo, CA 94806. LYNX and Client are referred to herein as the "Parties."

BACKGROUND

A. LYNX develops and provides proprietary software solutions to hospitals and other operators of emergency departments on a hosted basis to assist with appropriate reimbursement for such emergency medical services rendered to patients and to provide appropriate documentation for such reimbursement purposes; and

B. Client operates one or more emergency medical facilities and desires to utilize the LYNX software and services in such designated Client Locations (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties do agree as follows:

1. Definitions

Terms used in this Agreement are defined in the context in which they are first used or have the meaning stated below in this Article 1.

- 1.1 "Client Data" shall mean all data input into the Hosted System by Client and Users, including without limitation patient demographic data, presenting problem, charge and coding data and PHI.
- 1.2 "Client Locations" shall mean Client's emergency department locations identified in Exhibit A.
- 1.3 "CPI" shall mean the percentage increase of the Consumer Price Index – All Urban Consumers calculated by the U.S. government's Bureau of Labor Statistics for the relevant year.
- 1.4 "Database" shall mean the database where the data is housed, which includes Client Data.
- 1.5 "Enhancement" shall mean any functional or operational improvements of the Software and Materials provided by LYNX as part of the maintenance Services.
- 1.6 "Error" shall mean a material failure of the Software to function in accordance with the Software Specifications.
- 1.7 "Fees" shall have the meaning assigned to it as set forth in Section 3.1.
- 1.8 "Go-Live-Date" shall mean the date the Software is available to Client for use in a production environment.
- 1.9 "Hosted System" shall mean the Software, Database, Materials, Updates, Enhancements and Versions and all third party software, hardware and systems accessed or utilized by LYNX in providing the system and related Services to Client under this Agreement.
- 1.10 "Materials" shall mean any LYNX training or user manuals or similar documentation for the Software, regardless of the media or format in which such documentation may be provided.
- 1.11 "PHI" shall mean individually identifiable patient health information that is transmitted or maintained by electronic media or is transmitted or maintained in any other form or medium. "Health information" is any information relating to the past, present, or future physical or mental health or condition of an individual. 45 CFR §164.501, et. seq or similar.
- 1.12 "Service Level Agreement" shall, as of the Effective Date, mean the service level agreement attached as Exhibit B.
- 1.13 "Services" shall mean the planning, implementation, hosting, support and maintenance services performed by LYNX under this Agreement, including those as described in Exhibit A.
- 1.14 "Software" shall mean the E/Point software described in the Software Specifications, including all Updates, Enhancements and Versions thereto.

- 1.15 "Software Fees" shall mean the per visit fee as set forth in the attached Exhibit F.
- 1.16 "Software Specifications" shall mean the written specifications supplied by Lynx for the Software. The Software Specifications as of the Effective Date set forth in Exhibit C. The Software Specifications shall be modified from time to time as Updates, Upgrades, Enhancements and Versions are produced for the Software. The then-current Software Specifications are available from LYNX upon request.
- 1.17 "Update" shall include upgrades and shall also mean a Software correction or "bug fix" or a newly programmed feature provided by LYNX to rectify an Error in the Software or otherwise to cause the Software to perform substantially in accordance with the Software Specifications and any government code updates.
- 1.18 "User License Agreement" shall mean a click-wrap agreement between LYNX and each User for use by such User of the Hosted System, in the form attached as Exhibit D. The purpose of the User License Agreement is to protect the use of the Hosted System by Users. This document allows LYNX to enforce any breaches directly against Users instead of requiring Client to enforce such rights.
- 1.19 "Users" shall mean those number of employees of or contractors to Client set forth in Exhibit A who are authorized by Client (and who have been issued a User ID and password) to access and use the Hosted System and Client Data, and who had accepted the terms of the User License Agreement.
- 1.20 "Version" shall mean major new Software features provided by LYNX as a significant revision to the Software but not a new LYNX product.

2. Services and Software

- 2.1 LYNX Services. Subject to the terms and conditions of this Agreement, LYNX shall provide to Client the Services described in Exhibit A.
- 2.2 License Grant. Subject to the terms and conditions of this Agreement, LYNX grants to Client a non-exclusive, non-transferable license, without the right to sublicense, to access, use and display the Hosted System remotely via the Internet through the client application component of the Software, which is downloaded onto Client's workstations when the Users first access the Hosted System, (a) solely for Client's internal usage; and (b) so the number of Users set forth in Exhibit A may access, view, edit or print the Client Data in the Hosted System for Client's internal business purposes. Different levels of permissions for access and use will be granted to Users based on their role within the Client. Users may only access and use the Hosted System within the U.S. and Client Data according to their particular levels of permission established by Client.
- 2.3 Restrictions on Use. LYNX and its licensors reserve all rights in and to the Hosted System not expressly granted to Client under this Agreement. Without limiting the generality of the foregoing, and save as otherwise expressly permitted by law, Client shall not (a) reproduce, download, modify, translate, or create derivative works of the Hosted System, or any component thereof (except for any Client Data contained in the Database and except for the client application component of the Software which may be downloaded as described in Section 2.2) or attempt to reverse engineer, reverse translate, decode, decompile, disassemble or access the source code for the Hosted System; (b) use the Hosted System, or any component thereof, (except for any Client Data contained in the Database) in the operation of a service bureau to support any party other than Client; (c) disclose to others, transfer, assign, sublicense, rent, lease, lend, disseminate, distribute the Hosted System, or any component thereof (except for any Client Data contained in the Database); (d) permit any party, other than the then-currently authorized Users to independently access the Hosted System; and (e) transmit the Hosted System, in whole or in part, electronically by any means.
- 2.4 Authorized Use. Client shall implement reasonable controls to ensure that the Hosted System is only accessed and used by the then-currently authorized Users who have accepted the terms of the User License Agreement. Client shall promptly notify LYNX of any unauthorized access to or use of the Hosted System that becomes known to Client. Client shall take all reasonable steps to ensure that each User's access to and use of the Hosted System is in compliance with the terms of this Agreement and the User License Agreement. Client shall be responsible for any breaches by Users within Client's reasonable control, and shall cooperate with LYNX in the enforcement of the User License Agreement against all Users. LYNX shall have the right to immediately discontinue a User's access to and use of the Hosted System if such User breaches the terms of the User License Agreement or otherwise impedes or disrupts any third party's use of the Hosted System. Where reasonably possible, LYNX shall deliver notice to Client of the termination of a User's access to and use of the Hosted System.

- 2.5 Client's Obligations. Prior to LYNX commencing to provide the Services, Client shall have in place the appropriate browser and other software and hardware for accessing the Hosted System, as specified in Exhibit E.
- 2.6 Client Managers. Within ten (10) days of the Effective Date, LYNX and Client shall each designate a supervisory representative ("Client Manager") who shall be responsible for the conduct and performance of its respective employees, the installation and access to the Hosted System, the preparation and delivery of all required materials, reports, facilities or work for the Services, the addition of other Client Locations operated or owned by Client where the Hosted System may be used under this Agreement, and other day-to-day communications. Either party may replace its Client Manager upon reasonable prior written notice to the party.
- 2.7 Access to Premises. For access to and operation of the Hosted System or performance of the Services, as appropriate, Client shall provide LYNX with reasonable access to and use of its premises and facilities as requested. LYNX personnel shall comply with Client's reasonable security or other comparable rules and policies while working on Client's premises or in its facilities.
- 2.8 LYNX's Ownership. Client agrees that LYNX and its third party licensors shall retain ownership of all rights, title and interest (including all copyrights, patents, trademarks, trade secrets and other intellectual property rights) in and to the Hosted System (including without limitation the Software, Database (and all data therein except for the Client Data), Materials, Updates, Enhancements and Versions), and all processes, know-how, methodology and the like utilized by or created by LYNX in the provision of the Services, subject to the limited license granted to Client under this Agreement during the term of this Agreement.
- 2.9 Client's Ownership. LYNX agrees that Client shall retain ownership of all rights, title and interest in and to the Client Data, except that during the term of this Agreement LYNX may access and use the Client Data only as necessary to perform its obligations in accordance with the terms of this Agreement, including, without limitation, hosting, support, maintenance and reporting.

3. Payment and Billing

- 3.1 Payment. Subject to Section 3.2, Client shall pay LYNX fees for the Services and access to and use of the Hosted System (collectively, "Fees") as set forth in Exhibit F. Client's payment of such Fees shall be due and payable on a monthly basis within thirty (30) days of receipt of the LYNX invoice for such Services or use of the Hosted System.
- 3.2 License Fee Adjustments. During the Initial Term (as defined below), the Fees shall be as set forth in Exhibit F, subject to the terms of Section 3.3. At least ninety (90) days prior to the end of the Initial Term or of any applicable Renewal Period thereafter, LYNX may give notice to Client of any new Software Fees that will be effective at the commencement of the upcoming Renewal Period. Any Fees in connection with subsequent Services shall be at the then applicable time and materials rates.
- 3.3 CPI. Notwithstanding the terms of Section 3.2, effective on each anniversary of the Effective Date during the Initial Term and each Renewal Period, the Fees due in the next year under this Agreement shall be increased by the lesser of four (4%) percent or the percentage increase in CPI applicable on the date of each such anniversary. All such increases shall be cumulative for the purposes of calculating the following year's CPI increase.
- 3.4 Taxes. If not otherwise exempt under applicable law, Client shall pay any applicable sales or use taxes. If Client claims such a tax exemption under applicable law, Client shall provide LYNX with an appropriate tax exemption certificate within ten (10) days of the Effective Date.
- 3.5 Billing and Late Charge. LYNX shall submit an invoice to Client by the fifteenth (15th) day of each month for the Fees due for the Hosted System and Services provided by LYNX during the previous month. A finance charge of one and one-half percent (1½%) per month shall be charged on delinquent accounts until paid in full.
- 3.6 Suspension of Services. In addition to any other remedy available at law or in equity, upon ten (10) days written notice thereof, LYNX may suspend its Services or access to and use of the Hosted System by Client if Client is delinquent by more than two (2) monthly payments of the Fees and has failed to cure such delinquency within ten (10) days after written notice thereof.

4. Warranties, Disclaimers and Limitations

- 4.1 **Performance Warranty.** LYNX warrants to Client that the Software shall perform substantially in accordance with the Software Specifications during the term of this Agreement, provided all maintenance obligations are satisfied. Subject to exceptions provided in Section 4.10, as Client's sole and exclusive remedies and LYNX's sole obligations with respect to any breach of the foregoing warranty notified to LYNX by Client during the term of this Agreement, at no additional charge to Client, LYNX shall use prompt and commercially reasonable efforts to supply an Update pursuant to provision of the maintenance Services and shall be liable to Client for any proven claim of damages up to the maximum liability limitation set forth in Section 4.10. In addition, if after a commercially reasonable period of time LYNX cannot remedy a defect in the Software such that the Software is unable to assign E/M visit levels, Client shall receive a 100% discount on the applicable Software Fees due in the next month's invoice and subsequent months until the issue is reasonably resolved. Client shall promptly notify LYNX in writing of its request for any such action.
- 4.2 **Authority; No Legal Proceedings Warranties.** LYNX warrants to Client that LYNX owns or otherwise has the right to license the Software to Client as provided herein. Client's sole and exclusive remedy and LYNX's sole obligation with respect to any breach of the foregoing warranty shall be as set forth in Section 4.10 of this Agreement.
- 4.3 **No Viruses Warranty.** LYNX warrants to Client that the Software does not contain any known virus or disabling code that will interrupt or interfere with Client's intended use thereof.
- 4.4 **Warranty for Services.** LYNX warrants to Client that the Services will be performed in a professional manner by appropriately qualified personnel. The Service Level Agreement sets forth some exclusive remedies for breach of the Services levels described therein.
- 4.5 **Client's Warranties.** Client warrants to LYNX that Client has all requisite power and authority to execute and deliver this Agreement and to perform the Client's obligations hereunder. This Agreement has been duly and validly executed and delivered by the Client, and constitutes a valid and binding obligation of Client, enforceable against Client in accordance with its terms. Client warrants to LYNX that is presently has sufficient funds and will have sufficient funds available to timely pay LYNX all amounts due or that will come due under this Agreement.
- 4.6 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 4, LYNX MAKES AND CLIENT RECEIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR TRADE USAGE.
- 4.7 **Acknowledgment.** CLIENT HEREBY ACKNOWLEDGES THAT THERE IS NO ESTABLISHED GOVERNMENT OR LEGAL MECHANISM BY WHICH ANY SYSTEM FOR CURRENT PROCEDURAL TERMINOLOGY ("CPT") CODING CAN BE REVIEWED OR APPROVED AND THAT THE SOFTWARE FOR CPT CODING UNDER THIS AGREEMENT HAS NOT BEEN SO REVIEWED OR APPROVED. CLIENT FURTHER ACKNOWLEDGES THAT LYNX HAS DEVELOPED ITS SOFTWARE IN GOOD FAITH ON THE BASIS OF ITS DATABASE OF EXPERIENCE WITH MANY OPERATORS OF ED FACILITIES OVER A NUMBER OF YEARS AND ON THE ADVICE OF INDEPENDENT EXPERTS IN THE FIELD OF EMERGENCY MEDICINE. LYNX DOES NOT WARRANT THAT THE HOSTED SYSTEM AND CLIENT DATA WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE HOSTED SYSTEM WILL BE CORRECTED. LYNX DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY THAT THE SOFTWARE IS ERROR-FREE OR WILL ALWAYS RESULT IN CPT CODING BY CLIENT THAT WILL BE APPROVED OR ACCEPTED BY GOVERNMENTAL AUTHORITIES.

In the event a third party government payor challenges Client's compliance with the government payor's regulations, and such challenge is as a result of LYNX's failure to satisfy its obligations under this Agreement, then as part of its warranty, LYNX will provide reasonable ED coding audit consulting services to Client to assist Client with such challenge. In the event that LYNX has not breached its obligations under this Agreement, then Client shall be responsible for all costs associated with such audit consulting services provided by LYNX including any travel costs incurred by LYNX associated with such audit services. During an audit LYNX may provide the methodology or the information on the Software algorithm to a third party. Such third party will be required to sign a Non-Disclosure Agreement prior to receiving any such information.

- 4.8 Client Responsibilities. Client acknowledges that computer systems, telecommunications systems and the Hosted System, or the components thereof, may be subject to errors or interruption. Client shall be solely responsible for protection and backup of its computer and telecommunications systems and for the storage, retrieval or transmission of any data used, processed or compiled by the Hosted System, including the Client Data. Client will also have the obligations outlined in Exhibit G.
- 4.9 Infringement. With respect to the intellectual property warranty in Section 4.2 during the term of this Agreement:
- 4.9.1 If the Software becomes or, in LYNX's opinion, is likely to become the subject of a claim of infringement of a third party's U.S. patent, copyright, trademark or trade secret rights, LYNX may, at its option and expense, either (a) procure for Client a license with the necessary rights to use the Software as contemplated by this Agreement or (b) replace or modify the Software such that Client may use the Software without infringing upon any such third party's rights, provided that all performance characteristics of the replaced or modified Software remain substantially in conformity to the Software Specifications. If neither of the foregoing options is commercially feasible in LYNX's judgment, LYNX may terminate this Agreement without further obligation and provide Client with a refund of the implementation fees pro-rated over the Initial Term; and
- 4.9.2 LYNX shall indemnify and defend Client and its officers, directors and employees from any and all losses, damages, costs and expenses, including reasonable attorneys' fees, arising from any claim or action that the Software infringes a third party's U.S. patent, copyright, trademark, or trade secret rights ("Legal Action"). However, LYNX shall have no obligation to defend Client in any Legal Action, or to pay any such costs, damages, and attorneys' fees therein, based upon the combination, operation, or use of the Software with any programs or data not supplied by LYNX if such infringement would have been avoided without such particular non-LYNX programs or data or by use of the replacement or modified Software provided by LYNX as contemplated by Section 4.9.1. As conditions to such indemnity to Client for any Legal Action, (a) Client shall give prompt written notice of any such claim for indemnity to LYNX, together with the reasonable details and background of such Legal Action; (b) LYNX shall solely and exclusively control the defense thereof; (c) Client shall give its reasonable cooperation to LYNX (at LYNX's expense) in the defense thereof; and (d) Client shall not settle or compromise such Legal Action without the express written consent of LYNX.
- 4.10 Limitation of Liability. IN NO EVENT SHALL LYNX BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFIT OR OTHER MONETARY LOSS, LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME, ALTERATION OR ERRONEOUS TRANSMISSION OF DATA, UNAUTHORIZED ACCESS TO, OR USE OF DATA PROCESSED OR TRANSMITTED BY, TO, OR THROUGH THE HOSTED SYSTEM, OR PROGRAM ERRORS, EVEN IF LYNX HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. LYNX'S MAXIMUM LIABILITY TO CLIENT (WHETHER IN TORT, STRICT LIABILITY, CONTRACT OR OTHERWISE) SHALL BE THE CUMULATIVE SOFTWARE FEES ACTUALLY PAID BY CLIENT TO LYNX IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO SUCH CLAIM OF LIABILITY, WHICH SUM CLIENT AGREES TO BE FAIR AND REASONABLE IN THE CIRCUMSTANCES AND WHICH HAS BEEN FUNDAMENTAL TO THE NEGOTIATION AND ESTABLISHMENT OF THE FEES UNDER THIS AGREEMENT. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OF THE EXCLUSIVE REMEDIES PROVIDED FOR UNDER THIS AGREEMENT.

5. Term and Termination

- 5.1 Initial Term and Renewal Periods. The initial term ("Initial Term") of this Agreement shall commence as of the Effective Date and, subject to early termination rights set forth here, shall remain in effect for three (3) years. This Agreement shall automatically renew on each subsequent anniversary date for an additional one year period ("Renewal Period") subject to any applicable change to the Fees as provided in Section 3.2. Either party may give the other party a thirty (30) day written notice of termination before the end of the Initial Term or at any time during any Renewal Period.
- 5.2 Termination for Convenience. During the first ninety (90) days after the Effective Date, Client may terminate this Agreement upon thirty (30) days prior notice to LYNX without any additional charge without any right of

refund. Client shall be responsible for payment of any Fees already incurred, including any Software Fees not yet billed by LYNX. Thereafter, this Agreement shall remain in full force and effect under Section 5.1 but subject to the early termination provisions set forth here.

- 5.3 Termination for Material Breach. Except as otherwise expressly provided in this Agreement, if either party materially or repeatedly breaches this Agreement and has not cured such breach within thirty (30) days of written notice thereof, the non-breaching party may terminate this Agreement upon written notice to the breaching party, which termination shall be effective immediately upon receipt of such notice of termination. Without limiting the foregoing, if Client becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up liquidated, voluntarily or otherwise, and such proceeding is not dismissed within sixty (60) days, LYNX may treat such occurrence as a material breach of this Agreement.
- 5.4 Force Majeure; Suspension and Termination. If a party is unable to perform any of its obligations under this Agreement (except for payment of money) due to any natural disaster, actions or decrees of governmental bodies, power or communication failure or other event beyond its reasonable control, such party shall give prompt written notice thereof to the other party and shall use commercially reasonable efforts to resume performance. Upon transmission of such notice, the affected party's obligations shall be immediately suspended. If the affected party's nonperformance exceeds ninety (90) days from the date of such notice, the other party may terminate this Agreement upon written notice thereof.
- 5.5 Cooperation at Termination. Upon any termination of this Agreement, LYNX shall reasonably cooperate with Client in the transition to a new system, subject to LYNX's standard time and material charges for such assistance. For avoidance of doubt, notwithstanding the foregoing, LYNX shall not be obligated to disclose to any successor service provider any copy of the Software or other components of the Hosted System or any other LYNX Confidential Information.
- 5.6 Effect of Expiration or Termination. Upon termination or expiration of this Agreement, in addition to the Parties' other rights and remedies available at law or equity but subject to any exclusive remedies set forth in this Agreement, the Parties shall have the following rights and obligations:
- Client shall immediately cease use of the Hosted System and verify in writing to LYNX that it has destroyed, permanently erased or returned to LYNX any portion of the Hosted System in its possession or control and all of LYNX's other Confidential Information; within fifteen (15) calendar days after the effective date of expiration or termination, LYNX shall make available to Client the Client Data by exporting the SQL database to approved back-up media, with reasonable notice to Client, shall erase all copies of Client Data in the Database, and return to Client all of Client's other Confidential Information in LYNX's possession or control; and all licenses shall immediately terminate (including, without limitation, all licenses under the User License Agreements).
- 5.7 Surviving Provisions. Upon termination of this Agreement, Client shall remain bound afterwards by this Agreement's non-competition, confidentiality, warranties, disclaimers, limitations of liability, payment provisions, dispute resolution and applicable definitions and miscellaneous provisions relating thereto.

6. Confidential Information

- 6.1 Confidential Information. Any non-public information about the business, patients, customers, suppliers, staff, finances, or operations of a party shall be "Confidential Information," and each party shall not permit the use, or disclosure of any such Confidential Information to any person (other than a party's own employees or agents who have a reasonable "need to know" such information for the performance of its obligations hereunder), unless such use, or disclosure is specifically authorized by the other party or is otherwise required for performance of this Agreement. Each party shall use at least reasonable care to safeguard and protect the other party's Confidential Information. Without limitation, LYNX "Confidential Information" shall include the Hosted System, except for the Client Data. Without limitation, Client's "Confidential Information" shall include the Client Data.
- 6.2 Exclusions. Information shall not be considered Confidential Information if it (a) at the time of disclosure is generally known to the public without violation of this Agreement; (b) has been obtained from a third party without obligation to the disclosing party; or (c) has been independently developed without use of or reliance on the disclosing party's Confidential Information.

- 6.3 **Permitted Disclosure.** A party may disclose the other party's Confidential Information if such information is required by law to be disclosed to a court or government agency, provided, in such case, prior to such disclosure, the party under such a requirement shall give reasonable cooperation to the affected party to limit public release of such information (e.g., by means of a suitable protective order).
- 6.4 **PHI.** LYNX acknowledges that, in the course of this Agreement, LYNX may have limited access to certain confidential PHI within Client's information systems. Without limiting the terms of Section 2.9, LYNX shall review and use PHI only as required for performance of this Agreement or as otherwise authorized by Client and shall not otherwise review, use or disclose such PHI to any third person. Disclosure of PHI shall be subject to the Business Associate Agreement (in the form of Exhibit H) and shall comply with the applicable provisions protecting the confidentiality and privacy of the protected health information of Client's patients as required under the Health Insurance Portability and Accountability Act (HIPAA) and regulations set forth there under.
- 6.5 **PUBLICITY.** Except as set forth below, each party agrees not to publicly display or disseminate any publication, advertisement, press release or other materials that may use or display the trade names or trademarks of the other party or otherwise identify the other party without the other party's prior approval, which approval shall not be unreasonably withheld.
- 6.5.1 LYNX may include the Client's name and logo in LYNX's published customer lists, website and material.
- 6.5.2 Client agrees to the following during the term of this Agreement. LYNX agrees to submit to Client all written copy/content proposed for use in press releases, case studies or byline articles described below for Client's approval prior to such copy/content is made public.
- 6.5.2.1 Approve LYNX's press release for publication that announces Client's selection of LYNX's software applications;
- 6.5.2.2 Speak with trade magazines or business journal media in support of LYNX's news announcements or editorial opportunities;
- 6.5.2.3 Act as a sales reference for other parties who may be interested in purchasing LYNX's products;
- 6.5.2.4 After Go-Live Date has been achieved,
- 6.5.2.4.1 approve a case study that documents Client's use of the Software and its associated business / clinical value for use on LYNX's website, in published materials and in selected publications;
- 6.5.2.4.2 approve LYNX's press release that announces Client's results from deploying the Software
- 6.5.2.4.3 consider presenting at a LYNX hosted webinar, area workshop, annual customer conference or industry conference.

7. Government Access to Records

- 7.1 **Access to Books and Records.** LYNX agrees to make available upon written request of the Comptroller General of the United States or the Secretary of the United States Department of Health and Human Services, or any of their duly authorized representatives, this Agreement and all books, documents and records of LYNX relating to the Services provided under this Agreement, until the expiration of four (4) years after the Services furnished under this Agreement are completed; provided, however, such access shall be permitted only to the extent necessary to verify the nature and extent of the cost of the Services provided by LYNX under this Agreement. The provision of this section shall have force and effect only to the extent that the provisions of Section 1861(v)(1)(I) of the Social Security Act, and the regulations related thereto, are applicable to this Agreement. The provisions of this section shall not constitute a waiver of any right on the part of either party to challenge the applicability of such provisions or to contest request for access to specific records. Moreover, if LYNX carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a 12-month period, with an organization related to LYNX by common control or ownership (as defined in 42 C.F.R. § 405.427(b)), LYNX agrees that such subcontract shall contain a clause to the effect that the access agreement stated in this section shall be binding upon such related organization.

8. Miscellaneous

- 8.1 Assignment. Neither party shall assign or subcontract this Agreement, in whole or in part, without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent of Client, LYNX may assign this Agreement to (a) any affiliate entity that is at least fifty percent (50%) owned and operated by LYNX or (b) any successor entity that merges with or acquires LYNX or that purchases all or substantially all of the business or assets of LYNX, as applicable, provided such successor entity agrees in writing to be bound by all the terms and conditions of this Agreement. In such event, LYNX shall give prompt written notice thereof to Client. Subject to the limitations expressed herein, this Agreement shall inure to the benefit of, and be binding upon the Parties, their successors, administrators, and assigns.
- 8.2 Entire Agreement; Amendment. This Agreement and any referenced Exhibits hereto constitute the entire Agreement between LYNX and Client on this subject matter and supersedes all prior and contemporaneous proposals, communications and agreements. This Agreement may be modified or amended only in writing signed by both Parties.
- 8.3 Severability. If any portion of this Agreement is held invalid, illegal, or unenforceable in any respect or for any reason, such portion shall be deemed inoperative and severed or modified as may best preserve the intent of the Parties and the remainder of this Agreement shall remain effective and binding upon the Parties.
- 8.4 Regulatory Compliance – Client's Compliance Program. LYNX acknowledges that Client maintains a Corporate Compliance Program.
- 8.5 Notices. A party may give any notice required or permitted under this Agreement by personal delivery, by fax, by a recognized private courier service or by United States registered or certified mail, postage prepaid and return receipt requested, and addressed or delivered to the other party at the following address, or such other address as may hereafter be designated by a party by written notice thereof to the other party:

If to LYNX:

Chris Martin
Executive Vice President
LYNX Medical Systems, Inc.
15325 SE 30th Place, Suite 200
Bellevue, WA 98007-6595
Fax: 425.865.8119

and

Legal Department
Picis, Inc.
100 Quannapowitt Parkway, Suite 405
Wakefield, MA 01880
Fax: 781.557.2311

If to Client:

Attn: Rick Reid, CFO
Doctors Medical Center San Pablo
2000 Vale Road
San Pablo, CA 94806
Fax: 510-970-5728

If delivered in person or by courier service, such notice shall be effective upon delivery. If faxed, such notice shall be effective on the date of faxing if a fax transmission sheet is received. If mailed as provided above, such notice shall be effective upon receipt.

- 8.6 Waiver. No term or provision hereof shall be deemed waived, and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
- 8.7 Headings. The section headings in this Agreement are for convenience or reference only and not be deemed to alter, modify, amend, limit, or restrict the obligations of the Parties.
- 8.8 Cumulative Remedies. Except as expressly stated in this Agreement, all remedies available to a party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 8.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules.
- 8.10 Independent Contractors. The Parties hereto are independent contractors and shall not be deemed partners, joint ventures, employees, agents or otherwise. Neither party shall make or purport to make any binding commitments on behalf of the other party to any other person.
- 8.11 Counterparts. This Agreement may be executed in two or more counterparts and each such counterpart shall be deemed an original hereof.

IN WITNESS WHEREOF, each party's duly authorized officer has executed this Agreement below as of the Effective Date.

LYNX MEDICAL SYSTEMS, INC.

By:

Name: Melissa Cruz

Title: CFO

Date:

DOCTORS MEDICAL CENTER SAN PABLO

By:

Name:

Title:

Date:

The following Exhibits are made part of this Agreement and incorporated herein.

- Exhibit A – Services to be Performed
- Exhibit B – Service Level Agreement
- Exhibit C – Software Specifications
- Exhibit D – End User License Agreement
- Exhibit E – System Specifications
- Exhibit F – Fees
- Exhibit G – Client Obligations
- Exhibit H – Business Associate Agreement
- Exhibit I – Travel and Expense Policy

EXHIBIT A
SERVICES TO BE PERFORMED

LYNX will provide the following Services pursuant to the terms and conditions of this Agreement:

1. LYNX Software Application

- 1.1 LYNX Software. LYNX will host the Software and Client Data as part of the Hosted System, and will make the Software and Client Data accessible to the number of Users set forth in this Exhibit A for use as permitted in this Agreement.

2. LYNX Hosted System Implementation

- 2.1 Preliminary Site Review & Development of LYNX Hosted System Implementation Plan. LYNX's Product Implementation team will work with Client representatives to determine the most effective Hosted System configuration for Client's environment. LYNX staff will work with Client staff to develop an implementation plan ("Implementation Plan") that meets the Client's needs and is mutually agreed upon by Client and LYNX, and when agreed and executed by both parties will become a part of this Agreement. If Client requests that LYNX staff provide on-site implementation assistance, additional fees will be applied, unless otherwise agreed in the Implementation Plan. The terms of this Agreement shall control in the event of any conflict between the Implementation Plan and this Agreement.
- 2.2 LYNX Hosted System Set-Up. LYNX will configure the Hosted System to establish settings to meet Client's needs based on the Implementation Plan, including:
- Remote access to the Hosted System from Client workstations
 - Client-specific table set up
 - Review and incorporation of current facility Client Locations' chargemaster into the LYNX Hosted System with recommendations for additions and deletions of specific codes. Client fees will not be reviewed.
 - Configure and test LYNX end of business to business VPN.
 - Configure and test hosted end of applicable interfaces in accordance with the LYNX interface specifications. (on the LYNX Website and/or distributed during the implementation)
- 2.3 LYNX Hosted System User Training. LYNX's Product Implementation team will provide remote training for Client staff that will be using the LYNX Hosted System, to ensure that Client staff is familiar with use of the Hosted System. If Client requests that LYNX staff provide on-site training, additional fees will be applicable.
- 2.4 LYNX Hosted System Go-Live Support. One representative from LYNX's Product Implementation team will be on-site to ensure a smooth implementation of LYNX Hosted System and to support Client transition to use of the LYNX Hosted System. If Client requests that LYNX staff provide additional on-site implementation assistance, additional fees will be applied, unless otherwise agreed in the Implementation Plan.
3. Client may request custom reports to be built at an additional cost. Reports will be limited to data fields already present in the LYNX database, or by using the limited number of User-Defined Fields (UDF's) in the database. Custom reports will be available for data export only.

4. Maintenance Services

4.1 LYNX Software Updates, Enhancements and Versions.

- 4.1.1 Maintenance Services includes the provisions of Updates, Enhancements and Versions. Any other LYNX products developed or licensed by LYNX will be available as separate LYNX products which can be licensed by Customer, when commercially available, for an additional license fee and additional maintenance fees and will be licensed and hosted under this Agreement as part of the Hosted System (subject to written amendment by the Parties setting forth such terms.)
- 4.1.2 As part of the provision of Updates, LYNX will correct any Errors within the Software, including and without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to maintain the LYNX Software so that it operates properly and in accordance with System Specifications described in Exhibit E of this Agreement.

In the event of a failure of the LYNX Software to perform as described herein, LYNX will respond as set forth in the Service Level Agreement.

- 4.1.3 LYNX will notify Client of any and all Enhancements and Versions scheduled for the LYNX Software in a manner such as e-mail or posting on the LYNX site. LYNX will provide access via the Hosted System of any Enhancements and Versions that occur during the term of this Agreement to Client free of charge.
- 4.1.4 LYNX is not required to do the following as part of the provision of Updates, Enhancements and Versions: (a) provide maintenance services for other than the most current versions of the Software; (b) develop and release new product Updates; (c) customize new product Updates to satisfy Client's particular requests; or (d) provide maintenance services or correct any errors in the Software caused by modifications made by Client or modifications made by LYNX at the request of Client, or improper use by Client.
- 4.2 LYNX Clinical Database Updates. LYNX may update the Database from time to time to reflect industry changes and User feedback.
- 4.3 LYNX Hosted System Technical Support. LYNX will provide technical support for Users of the LYNX Hosted System twenty-four (24) hours per day, seven (7) days per week, with toll-free telephone access. Core hours are from 7 a.m. to 5 p.m. PST on all LYNX business days. All other hours and days will be supported through pager access. The purpose of technical support is to answer User questions, not to perform modifications or customizations, all of which may be provided by LYNX on a time and materials basis.
- 4.4 Interface Support. LYNX will provide technical support under the preceding paragraph for any of the following interfaces the Client has purchased and installed in accordance with the LYNX interface specifications (on the LYNX Website or distributed during the implementation):
 - ADT interface
 - Charge Interface

Any modifications to the interfaces after the Hosted System goes live will result in charges for additional professional services. Current charges as of the Effective Date of this Agreement for such Fees are set forth in Exhibit E. LYNX reserves the right to modify such Fees unless otherwise set forth in this Agreement.

- 4.5 Costs. LYNX will invoice Client for travel and lodging costs associated with LYNX Software support issues and interface support issues that require travel to Client site for maintenance or repair.

5. Server Hosting

LYNX shall host the Hosted System and Client Data in accordance with the Service Level Agreement (SLA) attached to the Agreement as Exhibit B.

LYNX shall provide remote server hosting at no cost. Additional fees may apply if images are being stored on the server, such fees to be determined by LYNX in accordance with its then current pricing. Client may discontinue this service at any time during the term of this Agreement by providing LYNX within thirty (30) days written notice of intent to discontinue.

- Hardware/Software
 - LYNX will be responsible for providing the necessary hardware and software that is needed for the LYNX hosted server
- Connection Maintenance
 - LYNX will establish and maintain the hosted end of the VPN connection between LYNX and Client for interface and reporting hosts.
- Database Backups and Storage
 - LYNX will be responsible for the daily database back-ups.
- Table Maintenance
 - LYNX will be responsible for the establishment and maintenance of all Client tables in the Software Database.
 - All Client requested changes to tables will be initiated within 48 hours of written notice.

- Availability
 - As per the Service Level Agreement

6. Passwords

As part of the Services, LYNX shall be responsible for initially establishing an account (including an initial User ID and password) for the Users appointed by Client. Client will provide LYNX with a description of the type of access required for each User.

7. Users

Number of Users is not to exceed 20 at each Client Location.

8. Client Locations:

Doctors Medical Center - San Pablo Campus, 2000 Vale Road, San Pablo, CA

EXHIBIT B

SERVICE LEVEL AGREEMENT

Client acknowledges that LYNX uses a third party to host the Hosted System, and that from time to time the terms of this Service Level Agreement may be modified. LYNX shall give Client notice of any such changes as soon as commercially reasonable after LYNX is made aware of such changes. The Hosted System is accessed by Users using the Internet. LYNX assumes no responsibility for a User's ability to access the Internet.

System Availability	The Hosted System will be available for User access (uptime) 99% of the time 24x7x365, subject to the terms of this Service Level Agreement measured monthly. This does not include any local client system or communications failure. Uptime excludes (i) scheduled maintenance (times available upon request); (ii) emergency maintenance requested by Client or other LYNX customers that must by its nature only be conducted outside the scheduled maintenance window; provided that LYNX shall notify Client as soon as practicable of the need for such emergency maintenance before the Hosted System is taken offline; (iii) downtime caused by any unauthorized use of the Hosted System by Client or Users; and (iv) circumstances beyond LYNX' reasonable control. LYNX is not responsible for issues that might occur with global internet.
Response Time	All User entries shall display in less than 3 seconds and all transactions and screen transitions shall execute in not more than 5 seconds. (Test over 30 minutes) This includes TCP/IP Interface socket connections but excludes batch interfaces.
Latency	Average time required for round-trip packet transfers over the LYNX hosted communications backbone will not exceed 500 milliseconds during a calendar month. LYNX can not be responsible for client LAN or WAN issues nor the internet.
Packet Loss	Average percentage of IP packet loss will be less than 1% in a given calendar month over the LYNX hosted communications backbone. LYNX can not be responsible for client LAN or WAN issues nor the internet.
System Maintenance	Routine Server maintenance will be performed on Sundays between the hours 2 AM and 2:15 AM Eastern Time. Scheduled emergency maintenance will be performed between the hours of 2 AM and 6 AM Eastern Time. Minimum of two hours notification for Emergency Maintenance.

Disaster Recovery	For disaster recovery purposes, LYNX shall maintain backup servers. If LYNX declares a disaster situation, the Client Data and use of the Hosted System will be restored within 72 hours at the LYNX backup site. A test of this disaster recovery service will be performed once per calendar year.
Change Requests	All requests submitted by Clients will be initiated within 48 hours of receipt. Requests must be submitted to LYNX Support via phone or email. Client must have issue number for auditing purposes.
LYNX Support	Lynx Support will respond within 1 hour of Client reporting an emergency issue. Emergency issue is defined as a system down severity.

Remedies. Client's sole and exclusive remedy and LYNX' entire liability for any breach of this SLA shall be as follows: failure of any two of the SLA's within a 30 day period will result in a 5% discount in Software Fees for the next monthly billing cycle.

SLA Claims Process. LYNX will provide a written description of the outage at the end of a month during which there is a service outage. Client, at its discretion, may request a discount, if applicable, in the following month by sending a written request by email to LYNX' accounting department. Discounts can only be claimed for the prior calendar month.

EXHIBIT C
SOFTWARE SPECIFICATIONS

E/POINT

1. Algorithm Overview

The basis for the E/Point Software is the facility visit level algorithm. Each distinct presenting problem has a base weight representing the value of the minimum level of facility response required for problem treatment, including:

- Specific treatment and room equipment
- Minimum nursing effort
- Minimum duration of evaluation and treatment

The resulting level of service is a combination of points for the presenting problem, points for nursing services provided, and hospital resources used in patient treatment.

E/Point correlates with CPT examples and definitions, and was designed to provide an objective measurement of patient acuity.

2. Product Overview

E/Point is a charging tool designed to ensure appropriate, defensible code assignment and provide detailed reports on coding production, coder accuracy, and practice patterns. With E/Point, Users can:

- **Select encounters to code.** At site of coding, in the E/Point encounter log, coders review the list of encounters available to charge.
- **Assign codes**, including the E/M visit level code (at summary or audit level) and CPT procedure codes.

3. Reports

E/Point's reporting feature provides a variety of standard practice management reports, including a patient log that can be filtered based on desired criteria. E/Point's reporting feature also provides the ability to generate custom reports based on a variety of fields available within the E/Point Database.

EXHIBIT D
LYNX MEDICAL SYSTEMS, INC.
END USER LICENSE AGREEMENT

USE TERMS

1. I acknowledge that LYNX MEDICAL SYSTEMS INC. and its licensors retain ownership of all right and title (including any patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Hosted System and the Software, databases and data therein (except for the Client Data), documentation, updates and enhancements, and any authorized copies thereof.
2. I will not, either for myself or a third party:
 - (a) create any derivative works from the Hosted System;
 - (b) reverse engineer, reverse translate, decode, decompile, disassemble or access the source code for the Hosted System;
 - (b) use the Hosted System for any party other than my employer who has given me such access;
 - (c) disclose the Hosted System or any component thereof to any third party; or
 - (d) permit any unauthorized access to the Hosted System.

I AGREE __

I DO NOT AGREE __

EXHIBIT E
SYSTEM SPECIFICATIONS

Client Workstations (E/Point)

Minimum	Recommended
<ul style="list-style-type: none">• Intel® Pentium® III 750 MHz+• Microsoft Windows 2000 Professional SP4• Memory: 256 MB RAM• Available hard drive space: 500 MB• .NET Framework 2.0 sp1 or 3.5• Microsoft Internet Explorer 6.0• 15" Monitor• Mouse or other pointing device• 128 Kbps synchronous Internet speed or greater.	<ul style="list-style-type: none">• Intel® Core™ 2 Quad 2.66 GHz+• Microsoft® Windows® XP SP3, Windows Vista® Windows Server® 2003 or 2008• Memory: 4 GB RAM*• Available hard drive space: 1 GB• .NET Framework 2.0 sp1 or 3.5• Microsoft Internet Explorer 7.0• 19 " Monitor• Mouse or other pointing device• 640 Kbps synchronous Internet speed or greater.

* Maximum RAM may be constrained by Operating System

EXHIBIT F
FEES

LYNX Pricing

Service	Fee
LYNX Software	
E/Point ▪ LYNX Software Application License ▪ LYNX Software Application Updates ▪ LYNX Clinical Database Updates ▪ Technical Support Estimated Annual Census: 42,000	\$4.28 per visit
LYNX Implementation Services	
▪ Development of an Implementation Plan ▪ LYNX Software Set-Up ▪ LYNX User Training ▪ LYNX On-Site Software Go-Live Support	\$35,640 (Includes up to 198 hours) Promotional Discount**: (\$35,640) Total: \$0
Other Services (Valid for one (1) year from the Effective Date)	
Additional Implementation Support	\$187.50 /per hour
Additional User/Coder Training	\$187.50 / per hour
Additional Custom Programming/Report Creation	\$187.50 /per hour
Additional Interface Configuration/Testing	\$187.50 / per hour
LYNX Interfaces	
ADT HL7 Inbound Interface - Cloverleaf License/ Configuration (SKU #2345) Interface from the Client's registration system to transfer patient demographic information to the LYNX software	\$2,000 Includes up to 20 configuration hours
Outbound HL7 Charge Interface - Cloverleaf License/ Configuration (SKU #2346) Interface from the LYNX software to Client's Abstracting System	\$2,000 Includes up to 40 configuration hours

**Discount valid until December 30, 2009

1.1 Invoicing

LYNX will invoice Client on a monthly basis. Pricing components listed above as per-visit rates will be billed monthly based on processed visits for the preceding month. Processed visits shall be defined as new patient encounters created in the Software.

Interface Fees will be invoiced at 50% upon contract signing and 50% upon the Go-Live Date of each Interface at the Client Location.

1.2 Travel/Living Expenses

LYNX will bill Client at cost on itemized invoices for all travel and living expenses incurred by LYNX in providing the Services including the Implementation Plan developed jointly by LYNX and Client.

EXHIBIT G

CLIENT OBLIGATIONS

1. Work Space.

Client shall provide LYNX staff working on-site performing any work related to implementation and/or operation of the Hosted System and the Implementation Plan developed jointly by Client and LYNX with the following:

- A business-like working environment including, but not limited to, office space, desks, furnishings, and telephones with access to outside lines for business calls relating to LYNX's performance
- Access to Client's network(s) and Internet
- Access to the hardware that will be remotely accessing the Hosted System
- Other equipment reasonably necessary for LYNX to perform the Services and the Implementation Plan developed jointly by Client and LYNX, including but not limited to communications equipment and Internet connections

2. Hosted System Requirements

Client is responsible for providing the Client workstations, as defined in Exhibit E, for accessing the LYNX Hosted System, and for providing the facilities necessary for operating the Hosted System.

Client is further responsible for maintaining the Client workstation required for use of the Hosted System, as defined in Exhibit E of this Agreement, and for making any necessary repairs, replacements, and upgrades required to support the current version of the Software and any Updates, Enhancements and future Versions of the Software that may be installed during the term of this Agreement.

3. Compatibility

Client is responsible for the compatibility between the Hosted System and any computer equipment, software applications, and Information Systems of the Client's.

4. Telecommunications

Client must install and maintain, for the duration of this Agreement, a VPN connection. Client shall pay for VPN installation, maintenance, and use of equipment and associated charges.

5. Information and Access

Client must provide LYNX with sufficient support time and test time on Client's computer system to duplicate any reported problem with the Hosted System, certify that the problem is related to the Hosted System, and certify that the problem has been corrected. At LYNX's request, Client must provide all information pertaining to Client's computer system(s). Client is obligated to advise LYNX of any conditions that Client is aware will affect the Hosted System or LYNX's ability to provide the Services.

6. Client Project Leader

Client must designate a project leader for the LYNX project. This client project leader must be authorized by Client to:

- Make decisions, approve plans, and grant requests on behalf of Client in connection with implementation of the Hosted System consistent with the terms of this Agreement
- Make management decisions and provide personnel, including the appointment of other representatives as reasonably required by LYNX, in order to accomplish and facilitate the Services provided by LYNX in a proper and efficient manner
- Ensure that Client hardware, software, and other system components required for operation of the Hosted System are maintained in proper working order during the term of this Agreement
- Provide for or develop workflow and organizational processes to facilitate the implementation of and training for the Hosted System

7. Non-Competition

Client agrees that during the term of this Agreement and for a five-year (5-year) period following its termination, Client will not develop or commission the development of software for resale that is competitive with the LYNX Software. This restriction applies only if LYNX or LYNX's successor continues to market and/or support the LYNX Software.

8. Additional Client Obligations

During the term of this Agreement, additional items may be required. Any additional requirements to be made of Client by LYNX will be noted in the form of an Addendum to Exhibit G of this Agreement.

9. Training

Client must designate a training coordinator if the online web based training module is utilized. This training coordinator will ensure that all Users of the Software will complete and pass the online training module before the Users access the application in a production environment.

EXHIBIT H
BUSINESS ASSOCIATE AGREEMENT

I. DEFINITIONS FOR USE IN THIS ADDENDUM

- (a) Agreement. "Agreement" shall mean the License and Services Agreement entered into by Business Associate and Covered Entity on _____, 200____, into which this Addendum is incorporated by reference.
- (b) Business Associate. "Business Associate" shall mean LYNX Medical Systems, Inc.
- (c) Covered Entity. "Covered Entity" shall mean Doctors Medical Center San Pablo.
- (d) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (e) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (f) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (g) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 160.103.
- (h) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (i) Any terms used, but not otherwise defined in this Addendum, shall have the same meaning as those terms in the Privacy Rule.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- (b) Business Associate agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the electronic Protected Health Information other than as provided for by this Addendum.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.
- (d) Business Associate agrees to promptly provide notice to Covered Entity of any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware, but in no event shall the notice be given later than five (5) business days after Business Associate becomes aware of such use or disclosure. Notice shall be provided in writing to: _____.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor; to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.
- (f) Within five (5) days of a request from Covered Entity, Business Associate shall provide access to Covered Entity or, as requested by Covered Entity, to an Individual, to Protected Health Information about such Individual contained in any Designated Record Set maintained by Business Associate, in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make; within ten (10) days following receipt of a written request by Covered Entity, any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- (h) Business Associate agrees to promptly make available internal practices, books, and records, including policies and procedures and Protected Health Information; relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity to the Covered Entity, or to the Secretary, or an individual designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Within ten (10) days of notice by the Covered Entity to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information regarding an Individual, Business Associate shall make available to the Covered Entity such information as is in Business Associate's possession and is needed to make the accounting required by 45 C.F.R.S 164.528. At a minimum, Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entity. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested after Covered Entity receives the information from Business Associate.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- (a) Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (b) Except as otherwise limited in this Addendum, Business Associate may use the Protected Health Information internally for the proper management and administration of Business Associate.
- (c) Except as otherwise limited in this Addendum, Business Associate may disclose Protected Health Information as required by law.
- (d) Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

IV. OBLIGATIONS OF COVERED ENTITY PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the electronic Protected Health Information other than as provided for by this Addendum.

V. TERM AND TERMINATION

- (a) **Term.** The Term of this Addendum shall be effective as of the Effective Date of the Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) **Termination for Cause.** In addition to and notwithstanding any other provisions in the Agreement addressing termination, upon Covered Entity's knowledge of a material breach of the terms of this Addendum by Business Associate, Covered Entity shall, in its sole discretion:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) Immediately terminate the Agreement; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (c) **Effect of Termination.**
 - (1) Except as provided in paragraph (2) of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the Protected Health Information. Business Associate shall be responsible for ensuring subcontractors or agents of Business Associate also comply with the provisions of Section V(c).
 - (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written certification of such, along with a description of the conditions that make return or destruction infeasible. Upon such determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

VI. MISCELLANEOUS

- (a) **Regulatory References.** A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

- (b) Amendment. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (c) Survival. The obligations of Business Associate under Section V(c) of this Addendum shall survive the termination of the Agreement.
- (d) Interpretation. Any ambiguity in this Addendum or the Agreement itself shall be resolved to permit Covered Entity to comply with the Privacy Rule.

EXHIBIT I
Travel and Expense Policy Summary

For the Representatives of

Picis, Inc.

Air Travel

Airline Class of Service

All air travel must be in coach class.

Travelers are expected to use the lowest logical airfare available. Business class is acceptable when it does NOT cost more than the lowest available coach fare.

Upgrades for Air Travel

Upgrades at the expense of the Licensee are NOT permitted.

Upgrades are allowed at the traveler's personal expense.

Lodging

Hotel Spending Guidelines

Travelers are subject to the following spending limits:

- Properties in the **Moderate** category hotel, such as Holiday Inn, Marriott, Embassy Suites, in a safe secure location.
- Properties where Licensor or a business partner has a negotiated rate.
- If a Licensee-negotiated rate is not available, travelers must use the least expensive property in a similar hotel category.
- Reimbursement shall include hotel room cost, taxes, other room rate fees charged by the hotel and internet connection fees.

Licensee Furnished Apartments

Travelers may agree to stay in Licensee furnished apartments providing they meet the following requirements.

- The apartment is in a safe secure location.
- Traveler has a private bedroom and bathroom.
- Traveler is not required to share such apartment.
- The apartment is furnished with a telephone, television, high-speed internet connection and such amenities as would be provided in a hotel.
- The apartment, linens and bathrooms are cleaned daily.

Rental Car

Rental Car Guidelines

Travelers may rent a car at their destination when:

- it is less expensive than other transportation modes such as taxis, airport limousines and airport shuttles
- more than 2 employees are traveling together

Travelers will be reimbursed for parking charges incurred by traveler while traveling from traveler's home to Licensee's site and while working at Licensee's site, which may include airport or hotel parking charges.

Rental Car Categories

Travelers should book the following rental car categories:

- Economy/Midsize when the traveler is alone or with up to two other employees.
- Full-size when the traveler is with more than two other employees or with a client.
- Pre-purchase fuel option is allowed
- Traveler will re-fuel car prior to drop off of the car if the pre-purchase fuel option is not used.

When picking up a rental car, travelers should check with the rental car agent for any promotional rates, last-minute specials or free upgrades.

Other Transportation

Reimbursement for Personal Car Usage

Travelers will be reimbursed for business usage of personal cars on a fixed scale of the then current IRS guidelines for mileage. This reimbursement includes but is not limited to:

- mileage from the traveler's home to/from the airport or rail service,
- mileage from the traveler's home to/from the Licensee's site.
- parking charges incurred by traveler while traveling from traveler's home to Licensee's site and while working at Licensee's site, which may include airport or hotel parking charges.
- tolls paid while traveling to Licensee's site.

Class of Service - Rail Travel

Domestic rail travel will be in Coach class.

First class/reserved seating for domestic rail service may be utilized:

- when upgrade is at no extra cost
- at the traveler's expense

Meals and Entertainment

Meals and Entertainment Expenses

Travelers will be reimbursed for actual meals and tips based on a \$50.00 per day maximum.

This Travel and Expense Policy Summary may be updated by Licensor upon written notice to Licensee.

Note: Receipts, if requested, are not provided for individual charges less than \$5.00

NEW FINANCIAL STATEMENT AUDITORS

TAB 6

**DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY
AGENDA ITEM REQUEST / RECOMMENDATION
DOCUMENTATION FORM**

TO: DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY

FROM: Richard S. Reid, CFO

DATE: January 27, 2010

SUBJECT: Financial Statement Auditors – Public Accounting Firm of Moss Adams LLP

REQUEST / RECOMMENDATION(S): Recommend to the District to Approve and authorize the Chief Financial Officer, to execute on behalf of DMC, to engage the Public Accounting Firm of Moss Adams LLP to perform financial statement auditing services for fiscal years 2009 to 2012.

FISCAL IMPACT: \$76,000 per year for a total of \$304,000. Out of pocket expenses are capped at 3% of the fees. This is included in the approved 2010 operating budget.

STRATEGIC IMPACT: Moss Adams, LLP will provide a complete and comprehensive audit of the financial statements and related processes, including internal control.

REQUEST / RECOMMENDATION REASON, BACKGROUND AND JUSTIFICATION: The agreement with prior auditors expired at the end of the 2008 financial statement audit. The CFO requested proposals from 6 firms, 3 local and 3 national. Based upon review of the bids received, Moss Adams LLP comprehensive audit approach has the best fits the needs of DMC.

Presentation Attachments: Yes X No

Requesting Signature: _____ Date: / /

SIGNATURE(S):

Action of Board on / / Approved as Recommended Other
Vote of Board Members:

 Unanimous (Absent)
Ayes: Noes:
Absent: Abstain:

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD ON THE DATE SHOWN.

Contact Person: Richard Reid

Attested _____
Eric Zell, Management Authority Board Secretary

Cc:
Accounts Payable
Contractor
CFO/Controller
Requestor

December 29, 2009

Audit Committee
c/o Mr. Rick Reid
West Contra Costa Healthcare District
2000 Vale Road
San Pablo, CA 94806

Re: Audit and Non-Attest Services

Ladies and Gentlemen:

Thank you for the opportunity to provide services to West Contra Costa Healthcare District. This engagement letter ("Engagement Letter") and the attached Professional Services Agreement, which is incorporated by this reference, confirm our understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams" and "we") will provide to West Contra Costa Healthcare District ("you," "your" and "Company").

Scope of Services

In this engagement, we will audit the Company's balance sheet as of December 31, 2009, and the related statements of revenues, expenses and changes in net assets, and cash flows for the year then ended.

In addition, we will provide the Company with the following non-attest services:

1. Assist you in drafting the financial statements and related footnotes as of and for the year ended December 31, 2009.

Limitations

Our professional standards require that we remain independent with respect to our audit clients, including those situations where we also provide non-attest services such as those identified in the preceding paragraphs. As a result, you must accept the responsibilities set forth below related to this engagement:

- Make all management decisions and perform all management functions (although we may provide advice, research materials, and recommendations to assist management in making decisions).
- Designate an individual with suitable skill, knowledge, and/or experience to oversee our non-attest services.

- Evaluate the adequacy and results of the non-attest services performed.
- Accept responsibility for the results of the non-attest services performed.

It is our understanding that Rick Reid, CFO been designated by the Company to oversee the non-attest services. If any issues or concerns in this area arise during the course of our engagement, we will discuss them with you prior to continuing with the engagement.

Timing

Chris Pritchard is responsible for supervising the engagement and authorizing the signing of the report. We expect to begin the audit fieldwork for this engagement at your offices on February 15, 2010. The audit engagement plan calls for 2 weeks of on-site procedures. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial statements will be available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the independent auditor's report.

Our scheduling depends on your completion of the year end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services. Our services will be concluded upon delivery to you of our report on your financial statements for the year ending December 31, 2009.

Fees

We estimate that our fees for the audit services will be \$76,000. You will also be billed for expenses at our cost as they are incurred, not to exceed 3% of the annual audit fee. Our fee estimate does not include time necessary to audit beginning balances for the fiscal year ending December 31, 2009, if warranted.

Our ability to provide services in accordance with our estimated fees depends on the quality, timeliness and accuracy of the Company's records, and the number of general ledger adjustments required as a result of our work. To assist you in this process, we will provide you with a Client Audit Preparation Schedule that identifies the key work you will need to perform in preparation for the audit. We will also need your accounting staff to be readily available during the engagement to respond in a timely manner to our requests. Lack of preparation, poor records, general ledger adjustments and/or untimely assistance will result in an increase of our fees.

West Contra Costa Healthcare District
December 29, 2009

Page 3

Additional Services

You may request that we perform additional services not contemplated by this Engagement Letter. If this occurs, we will communicate with you regarding the scope of the additional services and the estimated fees. It is our practice to issue a separate agreement covering additional services. However, absent such a separate agreement, all services we provide you shall be subject to the terms and conditions in the Professional Services Agreement.

We appreciate the opportunity to be of service to you. If you agree with the terms of our engagement as set forth in the Agreement, please sign the enclosed copy of this letter and return it to us with the Professional Services Agreement.

Very truly yours,

Chris Pritchard, Partner, for
Moss Adams LLP

Enclosures

ACCEPTED AND AGREED:

This Engagement Letter and the attached Professional Services Agreement set forth the entire understanding of West Contra Costa Healthcare District with respect to the services to be provided by Moss Adams LLP:

Signature: _____

Print Name: _____

Title: _____

Date: _____

PROFESSIONAL SERVICES AGREEMENT

Audit and Non-Attest Services

This Professional Services Agreement (the "PSA") together with the Engagement Letter, which is hereby incorporated by reference, represent the entire agreement (the "Agreement") relating to services that Moss Adams will provide to the Company. Any undefined terms in this PSA shall have the same meaning as set forth in the Engagement Letter.

Objective of the Audit - The objective of our audit is the expression of an opinion about whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit will be conducted in accordance with U.S. generally accepted auditing standards and will include tests of your accounting records and other procedures we consider necessary to enable us to express such an opinion. If our opinion is other than unqualified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

Procedures and Limitations - Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of certain receivables and certain other assets and liabilities by correspondence with selected customers, creditors, and financial institutions. We may also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about the financial statements and related matters. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. Such material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. A risk exists that we may not detect material misstatements because (a) an audit is designed to provide reasonable, rather than absolute, assurance the financial statements are free of material misstatement, (b) we will not perform a detailed examination of all transactions as such is cost prohibitive, and (c) an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors, fraudulent financial reporting or misappropriation of assets, and violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

Our audit will include obtaining an understanding of the Company and its environment, including its internal control sufficient to assess the risks of material misstatements of the financial statements whether due to error or fraud and to design the nature, timing, and extent of further audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify deficiencies in the design or operation of internal control. However, if, during the audit, we become aware of any matters involving internal control or its operation that we consider to be significant deficiencies under standards established by the American Institute of Certified Public Accountants, we will communicate them in writing to management and those charged with governance. We will also identify if we consider any significant deficiency, or combination of significant deficiencies, to be a material weakness.

We may assist management in the preparation of the Company's financial statements. Regardless of any assistance we may render, all information included in the financial statements remains the representation of management. We may issue a preliminary draft of the financial statements to you for your review. Any preliminary draft financial statements should not be relied upon, reproduced or otherwise distributed without the written consent of Moss Adams.

Responsibility for Financial Statements - You are responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. We may advise you about appropriate accounting principles and their application and will assist in the preparation of your financial statements, but you are responsible for the financial statements. This responsibility includes the establishment and maintenance of adequate records and effective internal controls over financial reporting, the selection and application of accounting principles, and the safeguarding of assets. You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Company involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, regulators or others. You are responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. You are also responsible for identifying and ensuring that the Company complies with applicable laws and regulations.

You agree that as a condition of our engagement you will provide us, in a timely and orderly way, with information in your possession that we request or that has a material impact on the nature or characterization of any material transaction to complete our engagement and that information will be, to the best of your knowledge and belief, truthful and accurate.

Dissemination of Financial Statements - Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make copies of our report, but only if the entire financial statements (including related footnotes and supplemental information, as appropriate) are reproduced and distributed with our report. You agree not to reproduce or associate our report with any other financial statements, or portions thereof, that are not the subject of this engagement.

You may choose to publish your financial statements electronically on the Company's Internet website. You agree we are not required under professional standards or this Agreement to read or monitor the information contained on your website or to consider the consistency of other information in the electronic site with the original document. However, we reserve the right to review the information as presented on your Internet website and to withdraw our report should we disagree with the form, context or manner of presentation of the financial statements upon which we reported. You agree that upon written notification of our objections you will immediately remove our report and any reference thereto or to Moss Adams from your Internet website.

Offering of Securities - This Agreement does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. You agree not to incorporate or reference our report in a private placement or other offering of your equity or debt securities without our express written permission. You further agree we are under no obligation to re-issue our report or provide consent for the use of our report at a later date in connection with an offering of securities, the issuance of debt instruments or for any other circumstance. We will determine, at our sole discretion, whether we will re-issue our report or provide consent for the use of our report only after we have conducted any due diligence we deem necessary in the circumstances. You agree to provide us with adequate time to review documents where our report is: (a) requested to be reissued, (b) referred to, or (c) reference to our firm as "Experts" is expected to be made. If we decide to re-issue our report or consent to the use of our report, you agree that Moss Adams will be included on each distribution of draft offering materials and we will receive a complete set of final documents. If we decide not to re-issue our report or withhold our consent to the use of our report, you may be required to engage another firm to audit periods covered by our audit reports, and that firm will likely bill you for its services. While the successor auditor may request access to our engagement documentation for those periods, we are under no obligation to permit such access.

Changes in Professional or Accounting Standards - To the extent that future federal, state, or professional rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we may terminate this Agreement as provided herein, regardless of the stage of completion.

Representations of Management - During the course of our engagement, we may request information and explanations from management regarding, among other matters, the Company's operations, internal controls, future plans, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In view of the foregoing, you agree that we will not be responsible for any misstatements in the Company's financial statements that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by the Company's management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

In addition, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, the Company further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the Company's financial statements resulting in whole or in part from false or misleading representations made to us by any member of the Company's management.

Fees and Expenses - The Company acknowledges that the following circumstances will result in an increase of our fees:

- Failure to prepare for the audit as evidenced by accounts and records that have not been subject to normal year-end closing and reconciliation procedures;
- Failure to complete the audit preparation work by the applicable due dates;
- Significant unanticipated transactions, audit issues, or other such circumstances;
- Delays causing scheduling changes or disruption of fieldwork;

- After audit or post fieldwork circumstances requiring revisions to work previously completed or delays in resolution of issues that extend the period of time necessary to complete the audit;
- Issues with the prior audit firm, prior year account balances or report disclosures that impact the current year engagement;
- An excessive number of audit adjustments.

We will endeavor to advise you in the event these circumstances occur, however we may be unable to determine the impact on the estimated fee until the conclusion of the engagement. We will bill any additional amounts based on the experience of the individuals involved and the amount of work performed.

Billings are due upon presentation and become delinquent if not paid within 30 days of the invoice date. Any past due fee under this Agreement shall bear interest at the highest rate allowed by law on any unpaid balance. Expenses are billed as incurred and include charges for such items as transportation, meals, lodging, long distance phone, postage, computer charges, photocopying, graphics preparation, invoicing and report processing. Direct expenses are passed through to you without markup. Indirect costs incurred specifically for your work, such as computer processing and copying, are passed through at our estimated clerical and equipment cost of providing the particular service or material. If we elect to suspend our engagement for nonpayment, we may not resume our work until the account is paid in full. If we elect to terminate our services for nonpayment, or as otherwise provided in this Agreement, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our work. You will be obligated to compensate us for fees earned for services rendered and to reimburse us for expenses made through the date of termination. You acknowledge and agree that in the event we stop work or terminate this Agreement as a result of your failure to pay on a timely basis for services rendered by Moss Adams as provided in this Agreement, or if we terminate this Agreement for any other reason, we shall not be liable to you for any damages that occur as a result of our ceasing to render services.

Limitation on Liability – All Services - IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Subpoena or Other Release of Documents - As a result of our services to you, we may be required or requested to provide information or documents to you or a third-party in connection with governmental regulations or activities, or a legal, arbitration or administrative proceeding (including a grand jury investigation), in which we are not a party. You may, within the time permitted for our firm to respond to any request, initiate such legal action as you deem appropriate to protect information from discovery. If you take no action within the time permitted for us to respond or if your action does not result in a judicial order protecting us from supplying requested information, we will construe your inaction or failure as consent to comply with the request. Our efforts in complying with such requests or demands will be deemed a part of this engagement and we shall be entitled to additional compensation for our time and reimbursement for our out-of-pocket expenditures (including legal fees) in complying with such request or demand.

Document Retention Policy - At the conclusion of this engagement, we will return to you all original records you supplied to us. Your Company records are the primary records for your operations and comprise the backup and support for the results of this engagement. Our records and files, including our workpapers whether kept on paper or electronic media, are our property and are not a substitute for your own records. Our firm policy calls for us to destroy our engagement files and all pertinent work papers after a retention period of seven years (or longer, if required by law or regulation), after which time these items will no longer be available. We are under no obligation to notify you regarding the destruction of our records. We reserve the right to modify the retention period without notifying you. Catastrophic events or physical deterioration may result in our firm's records being unavailable before the expiration of the above retention period.

Except as set forth above, you agree that Moss Adams may destroy paper originals and copies of any documents, including, without limitation, correspondence, agreements, and representation letters, and retain only digital images thereof.

Use of Electronic Communication - In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential to the Company. Our firm employs measures in the use of facsimile machines and computer technology designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept that we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume that you consent to our use of facsimile transmissions to your representatives and other use of these electronic devices during this engagement as we deem appropriate.

Enforceability - In the event that any portion of this Agreement is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of this Agreement.

Entire Agreement - This Professional Services Agreement and Engagement Letter constitute the entire agreement and understanding between Moss Adams and the Company. The Company agrees that in entering into this Agreement it is not relying and has not relied upon any oral or other representations, promise or statement made by anyone which is not set forth herein.

In the event the Parties fail to enter into a new Agreement for each subsequent calendar year in which Moss Adams provides services to the Company, the terms and conditions of this PSA shall continue in force until such time as the parties execute a new written Agreement or terminate their relationship, whichever occurs first.

Use of Moss Adams' Name - The Company may not use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Agreement or otherwise without the prior written consent of Moss Adams, which consent may be withheld for any or no reason and may be subject to certain conditions.

Dispute Resolution Procedure and Venue - This Agreement shall be governed by the laws of the state of Washington, without giving effect to any conflicts of laws principles. If a dispute arises out of or relates to the engagement described herein, and if the dispute cannot be settled through negotiations, the parties agree first to try in good faith to settle the dispute by mediation using an agreed upon mediator. If the parties are unable to agree on a mediator, the parties shall petition the state court that would have jurisdiction over this matter if litigation were to ensue and request the appointment of a mediator, and such appointment shall be binding on the parties. Each party shall be responsible for its own mediation expenses, and shall share equally in the mediator's fees and expenses.

If the claim or dispute cannot be settled through mediation, each party hereby irrevocably (a) consents to the exclusive jurisdiction and venue of the appropriate state or federal court located in King County, state of Washington, in connection with any dispute hereunder or the enforcement of any right or obligation hereunder, and (b) WAIVES ITS RIGHT TO A JURY TRIAL. EACH PARTY FURTHER AGREES THAT ANY SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

Termination - This Agreement may be terminated by either party, with or without cause, upon ten (10) days' written notice. In such event, we will stop providing Services hereunder except on work, mutually agreed upon in writing, necessary to carry out such termination. In the event of termination: (a) you shall pay us for Services provided and expenses incurred through the effective date of termination, (b) we will provide you with all finished reports that we have prepared pursuant to this Agreement, (c) neither party shall be liable to the other for any damages that occur as a result of our ceasing to render Services, and (d) we will require any new accounting firm that you may retain to execute access letters satisfactory to Moss Adams prior to reviewing our files.

LEASE OF IV PUMPS AND PROCESS

TAB 7

**DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY
AGENDA ITEM REQUEST / RECOMMENDATION
DOCUMENTATION FORM**

TO: DOCTORS MEDICAL CENTER MANAGEMENT AUTHORITY

FROM: Richard S. Reid, CFO

DATE: January 27, 2010

SUBJECT: Equipment Management Agreement with Universal Hospital Services – IV Pumps

REQUEST / RECOMMENDATION(S): Recommend to the District Board to Approve and authorize the Chief Financial Officer, or designee, to execute on behalf of DMC, to contract with Universal Hospital Services (UHS) to provide leasing of IV pumps, including day-to-day management and related maintenance and tracking services.

FISCAL IMPACT: Approximately \$28,000 monthly expense based upon daily usage. DMC will only pay for those pumps that are being used for direct patient care. This agreement will be funded through the normal operating budget of DMC. The daily lease rates are fixed for a 5 year period. Total lease cost for the contract period is \$1.7 million.

STRATEGIC IMPACT: This program improves the service level of equipment management and transfers the volume risk from DMC to UHS. There is also an increase in service coverage.

REQUEST / RECOMMENDATION REASON, BACKGROUND AND JUSTIFICATION: Management requests approval to sign a 5 year agreement for IV and PCA pumps with UHS for approximately \$28,000 per month. The lease includes pump utilization management including tracking services.

Presentation Attachments: Yes X No

Requesting Signature: _____ Date: / /

SIGNATURE(S):

Action of Board on / / Approved as Recommended Other

Vote of Board Members:

 Unanimous (Absent)

Ayes: Noes:

Absent: Abstain:

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD ON THE DATE SHOWN.

Contact Person: Richard Reid

Attested _____
Eric Zell, Management Authority Board Secretary

Cc:
Accounts Payable
Contractor
CFO/Controller
Requestor

ASSET MANAGEMENT PARTNERSHIP PROGRAM AGREEMENT

This Services Agreement (“Agreement”) between Universal Hospital Services, Inc. (“UHS”) and Doctors Medical Center (“Customer”) is effective December 1, 2009 (“Effective Date”). This Agreement has no force and effect, unless it is signed by Customer on or before February 1, 2010 and thereafter signed by UHS.

Services. Customer engages UHS to perform the services described in the Exhibit(s) (“Services”) on the equipment listed (“Equipment”) and for the fees (“Fees”) set forth in the Equipment and Fees Exhibit.

Term. This Agreement begins on the Effective Date and continues in effect for five years, unless it is terminated sooner pursuant to the Terms and Conditions Exhibit.

Incorporation of Exhibits. The following Exhibits are incorporated into this Agreement:

- Asset Management Partnership Program Exhibit
- Equipment and Fees Exhibit
- Business Associate Agreement Exhibit
- Terms and Conditions Exhibit

ACCEPTED AND AGREED TO:

Doctors Medical Center
2000 Vale Road
San Pablo, 94806

Universal Hospital Services, Inc.
7700 France Avenue South, Suite 275
Edina, MN 55435-5228

Signature _____

Signature _____

(print name)

Timothy W. Kuck

Title _____

Executive Vice President &
Chief Operating Officer

Date _____

Date _____

ASSET MANAGEMENT PARTNERSHIP PROGRAM ("AMPP") EXHIBIT

Customer retains UHS to improve the management of medical equipment used by Customer. UHS will provide Customer the Services described in this Exhibit on the equipment owned by UHS or owned by the manufacturer and managed by UHS under UHS' arrangement with the manufacturer ("UHS Equipment") and identified in the Equipment and Fees Exhibit. UHS also will provide Customer the Services described in this Exhibit on equipment owned by Customer or leased by Customer directly from the manufacturer ("Customer Equipment") and identified in the Equipment and Fees Exhibit. UHS Equipment and Customer Equipment are collectively referred to as "Equipment."

I. UHS SERVICES

- (a) **On-Site Management.** UHS will provide on-site personnel to manage Equipment utilization. The exclusive responsibilities of the on-site personnel are as set forth in the following table:

EQUIPMENT DESCRIPTION	UHS OWNED & MANAGED	HOSPITAL OWNED & UHS MANAGED	PROCESSING (CLEANING)	DELIVERY	PICK-UP	SOFTWARE TRACKING ROUNDS	INSPECT	REPAIR
Bbraun Infusomat Space Infusion Device	X		X	X	X	X	X	X
Hospira LifeCare PCA Pump w/Firmware & MedNet	X		X	X	X	X	X	X

- (b) **Maintenance; Inspections; Repair.** UHS will perform functional and electrical inspections of Equipment in accordance with manufacturer's guidelines, UHS' customary practices and the procedures and intervals listed in the UHS functional check out procedures and in compliance with the applicable standards of The Joint Commission ("TJC") and the National Fire Protection Association ("NFPA 99"). UHS will repair or replace, at UHS' option, any UHS Equipment or part of any UHS Equipment that Customer identifies as nonfunctional. Customer is responsible for any continued use of UHS Equipment after identifying it as nonfunctional. UHS has the right at any time, upon reasonable notice to Customer, to inspect UHS Equipment.

- (c) **Staffing Schedule.** The initial schedule for the on-site personnel is set forth below and is subject to change by UHS, based upon UHS' reasonable determination of the demand for Equipment Services:

UHS EMPLOYEES	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
UHS Operations Coordinator - Hospital	7 AM to 3:30 PM	7 AM to 3:30 PM	7 AM to 3:30 PM	7 AM to 3:30 PM	7 AM to 3:30 PM	OFF	OFF
HSR - PTE	OFF	OFF	OFF	2 PM to 7	2 PM to	8 AM to	OFF

UHS EMPLOYEES	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
				PM	7 PM	4:30 PM	
HSR - PTE	2 PM to 7 PM	2 PM to 7 PM	2 PM to 7 PM	OFF	OFF	OFF	8 AM to 4:30 PM
Total UHS Employees	1- 1-	1- 1-	1- 1-	1- 1-	1- 1-	1	1
Total Coverage	7 AM to 7 PM	7 AM to 7 PM	7 AM to 7 PM	7 AM to 7 PM	7 AM to 7 PM	8 AM to 4:30 PM	8 AM to 4:30 PM

(d) **Reporting.** UHS will maintain UHS Equipment to assist Customer with known reporting standards including, without limitation, those established by or under TJC and the Safe Medical Device Act.

(e) **Equipment Tracking Software.** UHS will install the UHS AIMS/CS 8 equipment tracking software system ("Software") and will maintain the Software to perform substantially in accordance with UHS' Software specifications to track location, utilization, availability and patient use of Equipment. Customer will interface the Software to its host processor and develop any customized programming necessary to transfer data to and from the host. UHS will not be responsible for any expenses incurred by Customer related to interfacing its computer hardware or software applications with the Software. UHS will provide routine Software maintenance in accordance with its customary practices. UHS does not warrant that the operation of the Software will be uninterrupted or error free.

UHS is not responsible for Customer's billing or the accuracy of Customer's accounting system or any obligations beyond those specifically enumerated herein.

(f) **Business Associate Agreement.** In connection with the use of the Software, UHS acknowledges that it will serve as a business associate to Customer, a covered entity, within the meaning of the Health Insurance Portability and Accountability Act and will execute the business associate agreement that is an Exhibit to this Agreement.

(g) **Customer Equipment.** When this Exhibit ends, UHS will return to Customer any Customer Equipment in its possession. UHS' tracking and reporting Services help protect against Equipment loss, but are not a guarantee that loss will not occur. Accordingly, UHS is not responsible for the loss of Customer Equipment, including accessories, unless such loss occurs while the Customer Equipment is in the care, custody and control of UHS and is due to the negligence or willful misconduct of UHS.

II. CUSTOMER RESPONSIBILITIES

(a) **Equipment Use.** Customer must use UHS Equipment only for the purpose for which it was intended and must not modify, repair or perform any maintenance of UHS Equipment without UHS' prior written consent.

(b) **No Encumbrances.** Customer will keep UHS Equipment free of all encumbrances. Customer authorizes the filing of any and all appropriate documentation (including UCC financing

statements) without further approval to acknowledge UHS or manufacturer's ownership interest. Customer will not remove or obscure any identification that evidences UHS or the manufacturer's ownership of UHS Equipment. Customer will not move or allow the removal of UHS Equipment from the location to which it has been assigned without UHS' prior written consent. UHS may, at any time on reasonable notice to Customer, inspect UHS Equipment on Customer's premises.

- (c) **Misuse or Theft.** Customer will pay for all replacement or repair of UHS Equipment and accessories that are damaged due to abusive or unauthorized handling by Customer's personnel or patients or lost due to theft. Damaged UHS Equipment will be reported to Customer prior to repair or replacement. The actual cost of repairs will be paid by Customer at UHS' then current labor rate and part charges. Charges for replacement of UHS Equipment and accessories will be included in UHS' invoice and billed at fair market value as determined by UHS.
- (d) **Equipment Investigational Analysis.** Customer will give UHS notice of the failure of any Equipment to perform in accordance with manufacturer's specifications, regardless of whether patient injury results. Customer will give the notice within 24 hours of discovering the failure and will include sufficient details to permit the parties to collaborate on developing an investigation plan. Customer will obtain UHS' written consent before performing or allowing a third party to perform any investigational analysis or operational verification testing of any UHS Equipment.
- (e) **Relationship.** Customer will use UHS as its exclusive provider of the types of medical equipment set forth in the Equipment and Fees Exhibit.
- (f) **Certain Software Fees.** Unless specifically identified as covered in the Equipment and Fees Exhibit, all software fees (other than AIMS/CS 8 fees), including without limitation, installation, maintenance and upgrade fees, are the sole responsibility of Customer.
- (g) **On-site Accommodation.** Customer will provide UHS without charge: (i) A reasonably satisfactory on-site work area; (ii) high speed internet access; and (iii) cooperation in the collection and analysis of data, including that acquired pursuant to this Exhibit, for the purpose of utilization and equipment usage review.
- (h) **Equipment Sale at Termination.** If UHS terminates this Exhibit for Customer's breach, UHS may elect to sell all or some of the UHS Equipment to Customer, and Customer must purchase such UHS Equipment. The price of the UHS Equipment will be the higher of fair market value or UHS' net book value based upon a seven-year depreciation schedule. Customer will purchase such UHS Equipment "As Is, Where Is" on the date of termination of this Exhibit. Title to such UHS Equipment will transfer to Customer, when UHS has received payment in full.
- (i) **Return of UHS Equipment.** When this Exhibit ends, UHS may enter onto Customer's premises to remove the UHS Equipment. Customer is responsible for the loss of Equipment, including accessories, unless such loss is due to the negligence or willful misconduct of UHS.

EQUIPMENT AND FEES EXHIBIT

The Equipment listed below will be updated, with an adjustment in Fees, as appropriate, upon the parties' agreement.

Fees are exclusive of taxes and incremental third party costs incurred based on Customer direction. All sales, use, personal property, excise or similar taxes and incremental third party costs relating to the Services are Customer's sole responsibility. UHS may increase Fees once every 12 months for increases in the Consumer Price Index - all urban consumers not seasonally adjusted, as set forth by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"). The increase will not exceed the increase in the most recently issued CPI over the CPI issued 12 months prior to the most recently issued CPI. The CPI adjustment will be effective as of the first day of the calendar quarter that includes the Agreement anniversary date. UHS will give Customer at least 30 days prior notice of a change in Fees.

AMPP SERVICES

EQUIPMENT

Fees for AMPP Services are set forth in the table below. Pay-Per-Use ("PPU") Fees are based on the use of UHS Equipment on a patient, during all or part of a day. If UHS Equipment is held by Customer and is not being used in patient care, UHS may bill Customer UHS' then current Monthly Fees for such Equipment. Pay-Per-Touch ("PPT") Fees are based on the use of Customer Equipment on a patient during all or part of a day. "Day" is defined as 12:00 midnight until 12:00 midnight the next day.

UHS PREFIX	MANUFACTURER	MODEL	DESCRIPTION	TYPE	RATE
JNE	Bbraun*	8713050U	Infusomat Infusion	PPU	\$ 6.28
EYT	Hospira**	20709-01	Lifecare PCA w Mednet	PPU	\$ 9.91

** UHS is responsible for all costs associated with the BBraun Space Infusion Drug List Editor software for this Equipment.*

***UHS is responsible for the initial implementation and annual subscription fees associated with this Equipment.*

BUSINESS ASSOCIATE AGREEMENT EXHIBIT

This Business Associate Agreement ("BAA") is between Universal Hospital Services, Inc. ("UHS" or Business Associate") and Doctors Medical Center ("Covered Entity").

WHEREAS, UHS will provide Covered Entity with certain services ("Services") that might involve UHS' receipt, use, disclosure or creation of Protected Health Information ("PHI") on behalf of Covered Entity, and the parties desire to reflect their understandings and obligations with regard to PHI as defined in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 ("Privacy Rule") and the Health Insurance Reform Security Standards ("Security Rule") set forth by the U.S. Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), as well as any substantive changes made to HIPAA, the Privacy Rule or the Security Rule pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"), as they become effective (collectively these changes, HIPAA, the Security Rule and the Privacy Rule are referred to as the "Privacy and Security Law").

NOW, THEREFORE, the parties agree as follows:

I. DEFINED TERMS

Capitalized terms that are not otherwise defined in this BAA have the meanings set forth in the Privacy and Security Law.

II. BUSINESS ASSOCIATE OBLIGATIONS

UHS agrees:

- (a) Not to use or further disclose PHI except as permitted or required by this BAA or as Required By Law. After § 13405 of ARRA is effective, UHS' use and disclosure of PHI will be, to the extent practicable, limited to a Limited Data Set, as defined in 45 CFR § 164.514(e)(2), or the minimum necessary (as may be defined or described by the Secretary in guidance under § 13424(c) of ARRA) to accomplish the intended purpose of such use or disclosure.
- (b) To use appropriate safeguards to prevent use or disclosure of PHI except as provided in this BAA to ensure the appropriate protection of the confidentiality, integrity and availability of PHI.
- (c) To use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this BAA to ensure the appropriate protection of the confidentiality, integrity and availability of PHI, including implementing administrative, technical and physical safeguards in the manner set forth in the regulations, 45 CFR §§ 164.302-164.318 of the Security Rule (including but not limited to the documentation thereof) to the extent that it is considered electronic PHI under the Security Rule.
- (d) To report to Covered Entity any use or disclosure of PHI not provided for by this BAA of which Business Associate becomes aware. Moreover, if Business Associate becomes aware that any of the PHI that is "unsecured protected health information" within the meaning of the Privacy and Security Law has been subject to a "breach" as that term is defined by the Privacy and Security Law, Business Associate will notify Covered Entity of such breach, including the

content set forth in § 13402 of ARRA and any implementing regulations, consistent with any time frames set forth in ARRA and any implementing regulations.

- (e) To ensure that any subcontractor or agent to whom it provides any of the PHI agrees to the same restrictions and conditions that apply to UHS with respect to such PHI.
- (f) To make internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by UHS on Covered Entity's behalf, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Law, as appropriate.
- (g) To make available to Covered Entity the information it needs to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- (h) For any PHI in UHS' possession that constitutes a Designated Record Set, (i) to make available the PHI necessary for Covered Entity to fulfill its responsibilities under 45 CFR § 164.524, and (ii) to make the PHI available for amendment and to incorporate any amendments to such PHI in accordance with 45 CFR § 164.526. As of the effective date of this BAA, neither UHS nor Covered Entity anticipates that UHS will create, maintain or possess a Designated Record Set.

III. PERMITTED USES AND DISCLOSURES OF PHI BY UHS

- (a) UHS may use or disclose PHI to perform Services for, or on behalf of, Covered Entity in a manner consistent with the Covered Entity's conduct of Treatment, Payment or Health Care Operations. UHS also may disclose PHI to other covered entities for purposes of their conduct of Treatment, Payment and certain Health Care Operations in a manner consistent with the Privacy and Security Law. Disclosures for Treatment purposes may include those necessary for care coordination and/or continuity of patient care.
- (b) UHS may use PHI for its management and administration or to carry out its legal responsibilities.
- (c) UHS may disclose PHI for UHS' management and administration, provided that disclosures are Required By Law or UHS obtains reasonable assurances from the person to whom the information is disclosed that (i) the PHI will remain confidential and (ii) the PHI will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person and (iii) the person will notify UHS of any instances of which it is aware or reasonably should be aware in which the confidentiality of the information has been breached.
- (d) UHS may use or disclose de-identified PHI as permitted by 45 CFR § 164.514.
- (e) UHS may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.502(j)(1).

IV. COVERED ENTITY OBLIGATIONS

Covered Entity agrees:

- (a) To notify UHS of (i) any limitation in its notice of privacy practices, (ii) any changes in, or revocation of, permission by an Individual to use or disclose PHI and (iii) any restriction in the use or disclosure of PHI to which Covered Entity has agreed, in each instance to the extent that such limitation, restriction or agreement might affect UHS' use or disclosure of PHI.
- (d) Not to request UHS to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Law if done by Covered Entity.
- (e) To obtain any consent or authorization that may be required by applicable state or federal law or regulation before furnishing PHI to UHS.

V. TERM AND TERMINATION

- (a) **Term.** This BAA automatically ends when UHS ceases to perform the Services for Covered Entity that necessitate this BAA. Additionally, upon knowledge of a material breach by the other party, either party may terminate this BAA after it has provided the other party with written notice of the breach in sufficient detail to enable the other party to understand the specific nature of the breach and afforded it an opportunity to cure the breach, and the other party has then failed to cure the breach within 60 days after such notice.
- (b) **Effect of Termination.** Notwithstanding anything to the contrary in any other agreement between the parties, upon termination of this BAA, UHS will return or destroy all PHI provided by Covered Entity to UHS, or created or received by UHS on behalf of Covered Entity, or, if it is infeasible to return or destroy PHI, the protections set forth herein automatically will extend to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as UHS maintains such PHI.

ACCEPTANCE. This BAA represents the entire agreement between UHS and Covered Entity relating to the subject matter hereof. No provision of this BAA may be modified, except in writing, signed by the parties. There are no third party beneficiaries to this BAA. Execution of this BAA by Covered Entity is not required. Covered Entity will be deemed to have accepted this BAA in all respects by providing PHI to UHS for the performance of Services by UHS as a Business Associate after the Effective Date of the Agreement.

Doctors Medical Center
2000 Vale Road
San Pablo, 94806

Universal Hospital Services, Inc.
7700 France Avenue South, Suite 275
Edina, MN 55435-5228

Signature _____

Signature _____

(print name)

Timothy W. Kuck

Title _____

Executive Vice President &
Chief Operating Officer

Date _____

Date _____

TERMS AND CONDITIONS EXHIBIT

I. Payment Terms. Invoices are typically rendered monthly and payment in full is due within 30 days of the date of invoice. UHS may charge an additional fee of 1.5% per month (18% per annum) or the maximum rate allowed by law, whichever is less, to late payments. On five days' notice to Customer, UHS may suspend performance of Services for non-payment until a reasonable time after the non-payment is cured. There is no right of off set, and Customer will take no deductions, unless authorized to do so by UHS through issuance of a credit memorandum. Customer will give UHS written notice of any incorrect charges within 90 days of the UHS invoice to which the claim relates.

II. Confidentiality. In connection with this Agreement, each party may disclose to the other certain confidential and proprietary information that is marked as confidential or that logically would be considered to be confidential (collectively, the "Confidential Information"). Confidential Information that is protected health information created or received on behalf of Customer, by UHS in its capacity as a Business Associate, will be handled in accordance with the Business Associate Agreement rather than this provision. For the avoidance of doubt, UHS Confidential Information includes without limitation any and all technical information, techniques, know-how, processes, software programs, software source documents, insurance and pricing information that UHS or its subcontractor provides to Customer. Each recipient agrees that the Confidential Information provided to it, regardless of form, will be received and maintained by it in confidence for five years after this Agreement ends.

The obligation of confidentiality will not apply with respect to any Confidential Information that: (a) is in the public domain at the time of discloser's communication to recipient; (b) was or becomes generally available to the public other than as a result of a disclosure by recipient in breach of this Agreement; (c) was in recipient's possession, free of any obligation of confidentiality, at the time of discloser's communication to recipient; (d) is communicated to recipient free of any obligation of confidence by a third party, which third party was free to make such disclosure without breach of any legal obligation to discloser; or (e) recipient is compelled to disclose by deposition, subpoena or other court or governmental action, as evidenced by advice of legal counsel, provided that recipient gives the discloser advance written notice of the Confidential Information to be disclosed as far in advance of its disclosure as is reasonably possible, practicable and legally permissible, and recipient cooperates with discloser, if discloser seeks to obtain a protective order concerning such Confidential Information.

III. Termination and Effect of Termination. At any time while this Agreement is in effect, either party may terminate the Agreement for cause, including insolvency and material breach, provided the non-defaulting party gives the other party written notice detailing the nature of its material breach of the Agreement. If the material breach remains uncured 90 days after notice to the breaching party, or if the breach is of a nature that cannot reasonably be cured in such 90-day period and the breaching party has failed to diligently commence and pursue actions necessary to cure the breach, then the non-defaulting party may terminate this Agreement at any time by providing written notice of the date of termination to the other party.

The terms of this Agreement that, by their nature must survive the termination of this Agreement to protect the party in whose favor they run, survive the termination of this Agreement.

- IV. Compliance.** Each party will comply with applicable laws, rules and regulations in connection with this Agreement. UHS has not been debarred, suspended or declared ineligible to market or sell items or services for which reimbursement may be made by Federal health care programs and is not included on the General Service Administration or HHS/OIG Exclusion List. To the extent required by law, UHS will make available to the Secretary of the U.S. Department of Health and Human Services, the Comptroller General or any of their duly authorized representatives this Agreement and UHS' books, documents and records that are necessary to verify the nature and extent of the cost of Services performed pursuant to this Agreement for a period of up to four years after such Services are furnished.
- V. Insurance.** While this Agreement is in effect, each party will maintain workers' compensation insurance in amounts required by law and will maintain commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence. UHS will provide Customer with online access to UHS Evidence of Insurance on Customer's request.
- VI. Disclaimer of Warranties and Liability Limitation.** UHS is not a manufacturer of Equipment and disclaims all warranties. Customer's sole remedy for breach of a manufacturer's warranty is against the manufacturer.

UHS MAKES ABSOLUTELY NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY, CONDITION OR PERFORMANCE OF EQUIPMENT OR PATENT INFRINGEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE. UNDER NO CIRCUMSTANCES SHALL UHS BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER WITH RESPECT TO CLAIMS MADE UNDER THIS AGREEMENT OR BY ANY CONSUMER OR OTHER USER OF EQUIPMENT OR SUPPLIES. EQUIPMENT AND SUPPLIES, INCLUDING WITHOUT LIMITATION ANY PROGRAMMED SOFTWARE, ARE LEASED OR SOLD "AS IS." UHS' LIABILITY, AT UHS' OPTION, IS LIMITED TO REPERFORMANCE OF THE SERVICES OR A REFUND OF THE SERVICE FEE PAID BY CUSTOMER TO UHS. THIS DISCLAIMER OF LIABILITY FOR ALL DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

- VII. Excusable Delays/Non-Performance.** Any delay or failure in performance other than non-payment will be excused to the extent caused by an extraordinary event or occurrence beyond the reasonable control of the non-performing party, including without limitation, fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, mechanical breakdowns, power outages, interruptions in telecommunications, material shortages, acts of terrorism, wars and changes in law, policy or inflationary pressure that render performance of Services by UHS commercially impracticable. The affected party will give the other party prompt notice of the delay or failure and the reason thereof and will exert commercially reasonable efforts to remove the causes or circumstances of non-performance with reasonable dispatch.
- VIII. Assignment.** Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that UHS may assign this Agreement to an affiliate or to a successor in interest to which the business relates.

- IX. Independent Contractor; Benefit.** The relationship between the parties is solely that of independent contractors. This Agreement is for the benefit of the parties. There are no intended third party beneficiaries to this Agreement.
- X. Governing Law; Jurisdiction.** This Agreement is governed by the laws of the State of Minnesota, notwithstanding its conflict of laws rule. Venue for any legal proceedings will be solely in Hennepin County, Minnesota.
- XI. Waiver; Severability; Entire Agreement; Amendment.** Waiver by either party of any breach of this Agreement will not be deemed nor constitute a continuing waiver or waiver of any other breach of this Agreement. A finding by a court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable under law will not affect the validity or enforceability of any other provision of this Agreement, unless a party's rights or obligations are materially and adversely affected by such ruling. This Agreement contains all agreements and understandings between the parties relating to its subject matter. Except as described in the Equipment and Fees Exhibit, any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each party.
- XII. Notices.** All required notices will be in writing and will be deemed to have been given as indicated:
- (a) If delivered in person or by Federal Express or similar nationally recognized express mail or courier service, which provides evidence of delivery, on the date of delivery;
 - (b) If sent by facsimile transmission, on the date the transmission is received by an employee of the recipient in legible form;
 - (c) If sent by certified or registered mail or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
 - (d) If sent by electronic messaging system, on the date the electronic message is received,
- unless the date of delivery (or attempted delivery) or receipt, as applicable, is not a business day or is after the close of business on a business day, in which case the communication will be deemed given and effective on the first following day that is a business day and provided that in each case the notice is properly addressed to the address provided in the appropriate signature block above or such other address as has been given by proper notice and directed to the attention of the Contracts Department in the case of UHS and to the attention of the title of the person signing this Agreement in the case of Customer.
- XIII. Relationship with UHS Staff.** If Customer were to hire a member of the UHS team, UHS would incur significant expense in hiring and training a replacement. Accordingly, while this Agreement is in effect and for one year after it ends, Customer will not, with respect to any UHS employee or contractor providing Services on behalf of UHS in connection with this Agreement, employ, solicit or entice, directly or indirectly, such person to become employed or retained by Customer or any affiliate of Customer or any competitor of UHS, without the express written consent of UHS.

QUALITY REPORT

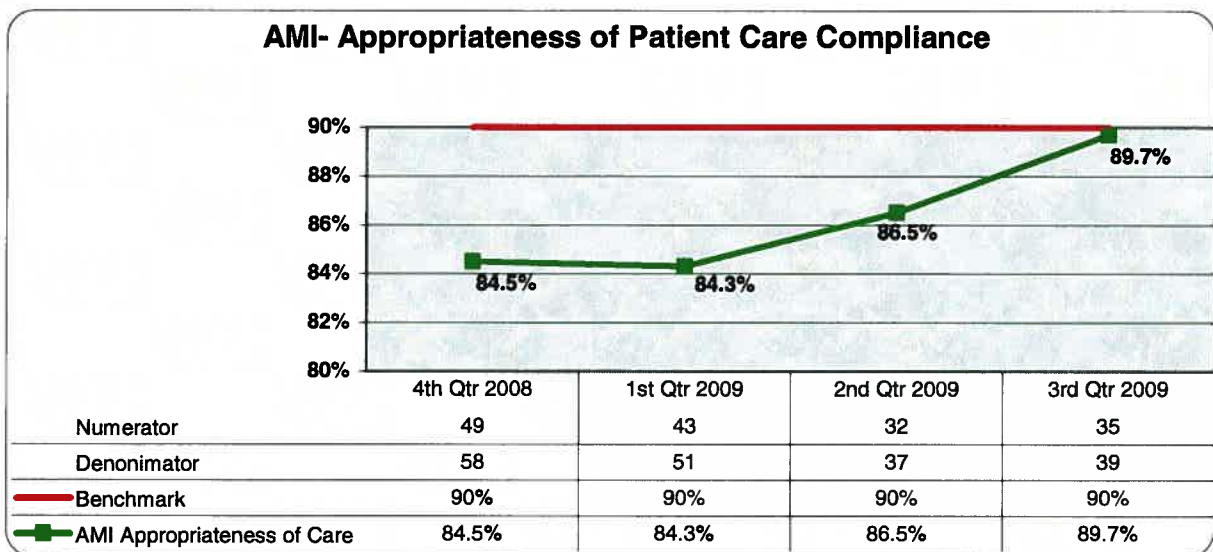
TAB 8

DOCTORS MEDICAL CENTER
Performance Improvement Program Evaluation
2009 Report
October 2008 – September 2009
Executive Summary

Accomplishments and Goals:

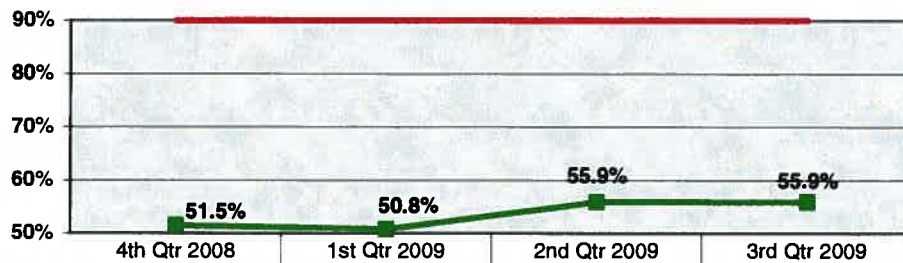
- New Quality Director was hired and started effective January 4, 2010
- Full Joint Commission Accreditation for 3 years with minimal deficiencies (7)
- Implementation of MIDAS project on target and to be operational for Risk, Case Management and Patient Relations for February 2010

Core Measure Teams



Measure	Discussion/Plan
AMI	<p>The hospital has seen a steady increase in overall compliance in the combined scores for AMI care. Issues related to limited case numbers is problematic for measures such as door to PCI time as it does not allow for any variation on expected on time intervention.</p> <p>Immediate goals for February include the reconvening of the PI team to formulate action items to demonstrate increase compliance of elements based on responsible party. The team will meet to develop tools to “hardwire” compliance for both clinical and medical staff.</p>

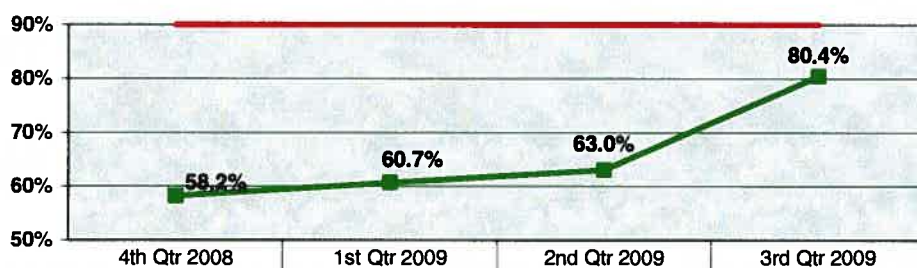
CHF- Appropriateness of Patient Care Compliance



Numerator	34	33	36	38
Denominator	66	65	60	68
Benchmark	90%	90%	90%	90%
CHF Appropriateness of Care	51.5%	50.8%	55.9%	55.9%

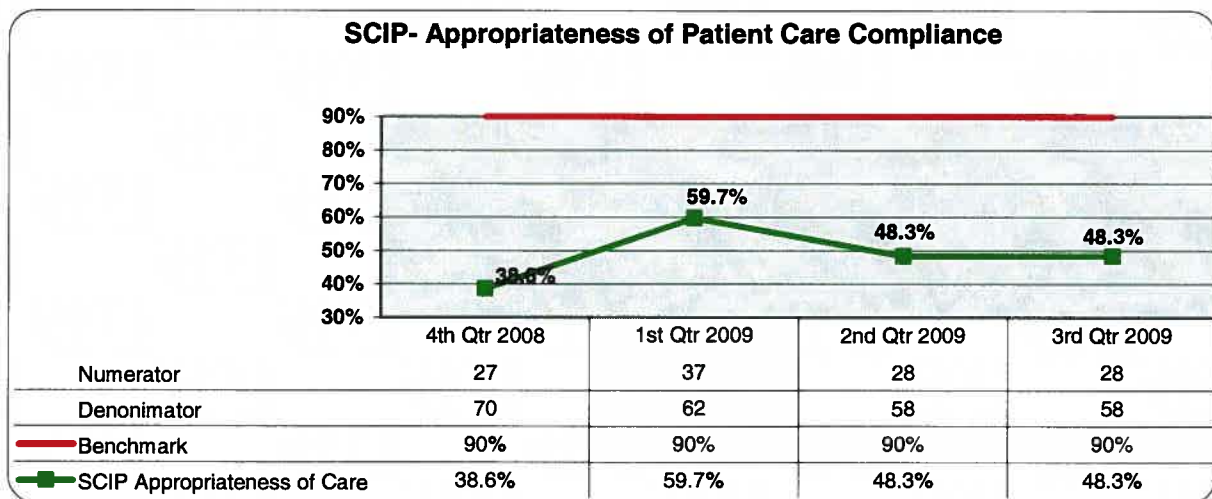
Measure	Discussion/Plan
CHF	<p>The percentage of compliance to the entire compliance remains unchanged from Qtr 2 to Qtr 3, with no evidence of reversal of action previously taken from Quarter 1 of 2009.</p> <p>Immediate goals for February include the reconvening of the PI team to formulate the development of a discharge instruction tool that will ensure that all elements of education are achieved, which increase our overall compliance score. Physicians continue to increase compliance with the aspects of care they are directly responsible for.</p>

PNA- Appropriateness of Patient Care Compliance



Numerator	32	34	34	45
Denominator	55	56	54	56
Benchmark	90%	90%	90%	90%
PNA Appropriateness of Care	58.2%	60.7%	63.0%	80.4%

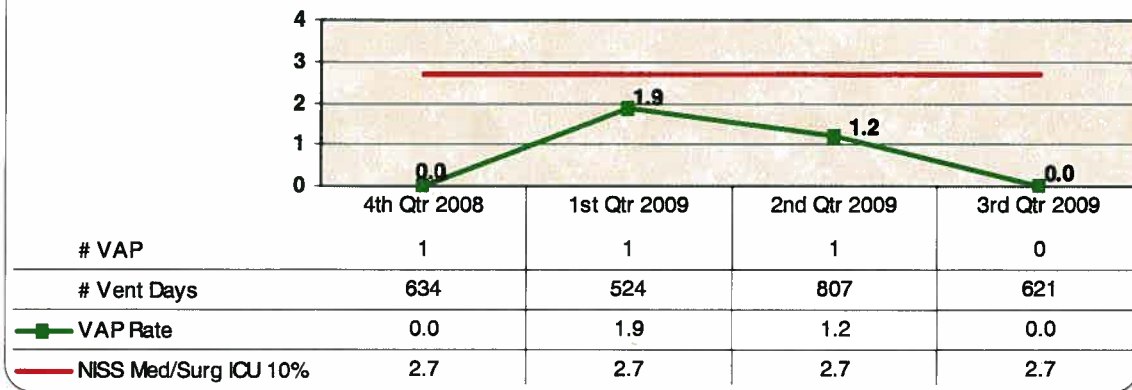
Measure	Discussion/Plan
PNA	<p>The percentage of compliance to the entire compliance has increased significantly from 2nd to 3rd Qtr.</p> <p>Immediate goals for February include the reconvening of the PI team to formulate the development of a process to increase compliance with pneumococcal vaccine administration and collection of blood cultures in both the ICU and ED, as well as to formulate the development of a discharge instruction tool that will ensure that all elements of education are achieved, which increase our overall compliance score. Physicians continue to increase compliance with the aspects of care they are directly responsible for.</p>



Measure	Discussion/Plan
SCIP	<p>The percentage of compliance to the entire bundle has remained unchanged from 2nd to 3rd Quarter for 2009.</p> <p>Immediate goals for February include the reconvening of the PI team to formulate the development of a process to increase compliance for Ortho physicians related to antibiotic ordering administration within 1 hour. The team will evaluate communication issues as well as any barriers to intervene within the expected 1 hour. The medical staff has demonstrated great compliance with the discontinuance of antibiotics from previous interventions undertaken.</p>

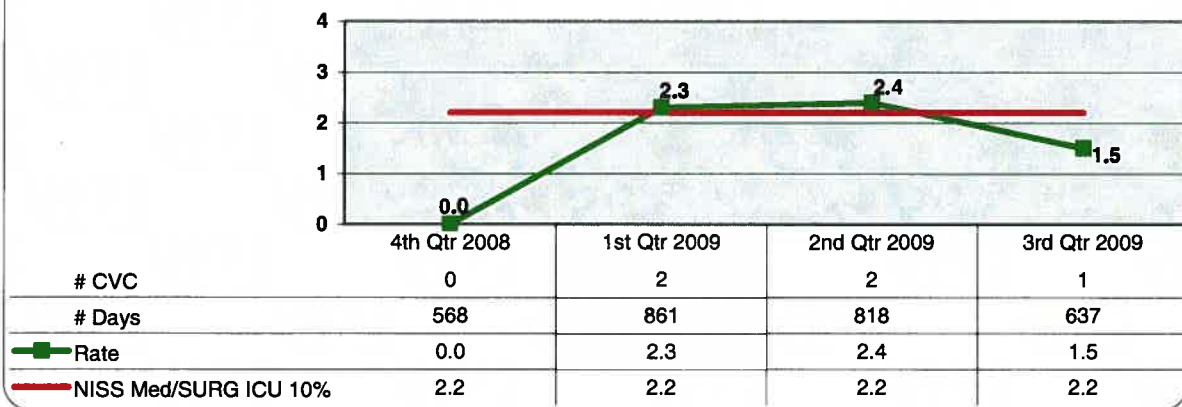
Infection Control Measures

Ventilator Associated Pneumonia-ICU

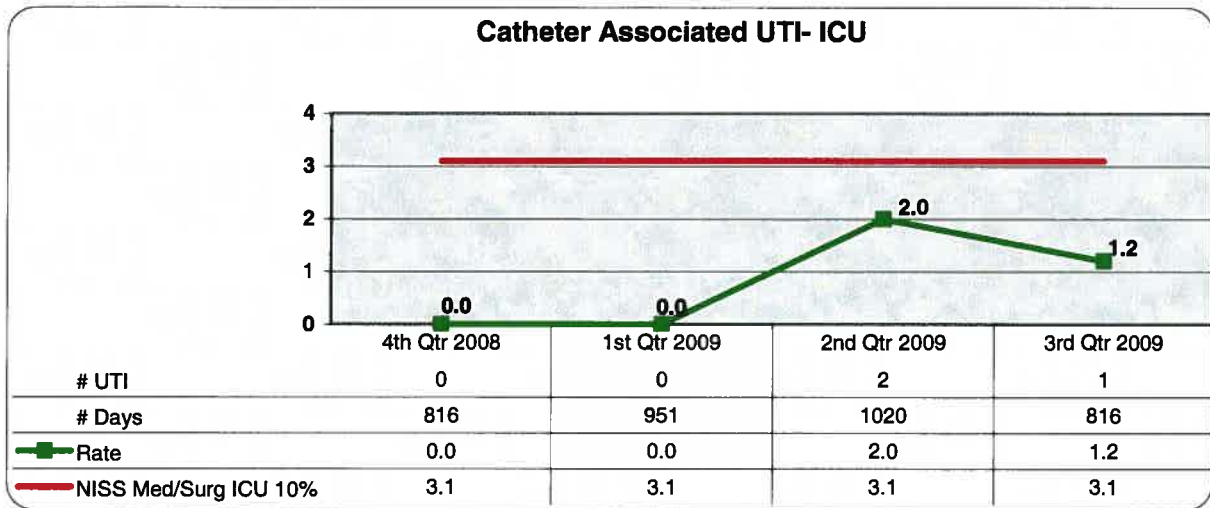


Goal	Discussion/Plan
Ventilator Associated Pneumonia (VAP)- ICU	Third quarter demonstrated zero VAPs, which has occurred twice in the past 12 months of reporting. In quarters where VAPs were identified, the hospital still remains under the NISS benchmark.

Central Venous Catheter Bloodstream Infections-ICU



Goal	Discussion/Plan
Central Venous Catheter Bloodstream Infections-ICU	The hospital did see 1 quarter without any identified catheter associated BSIs. The hospital is slightly above the NISS benchmark.



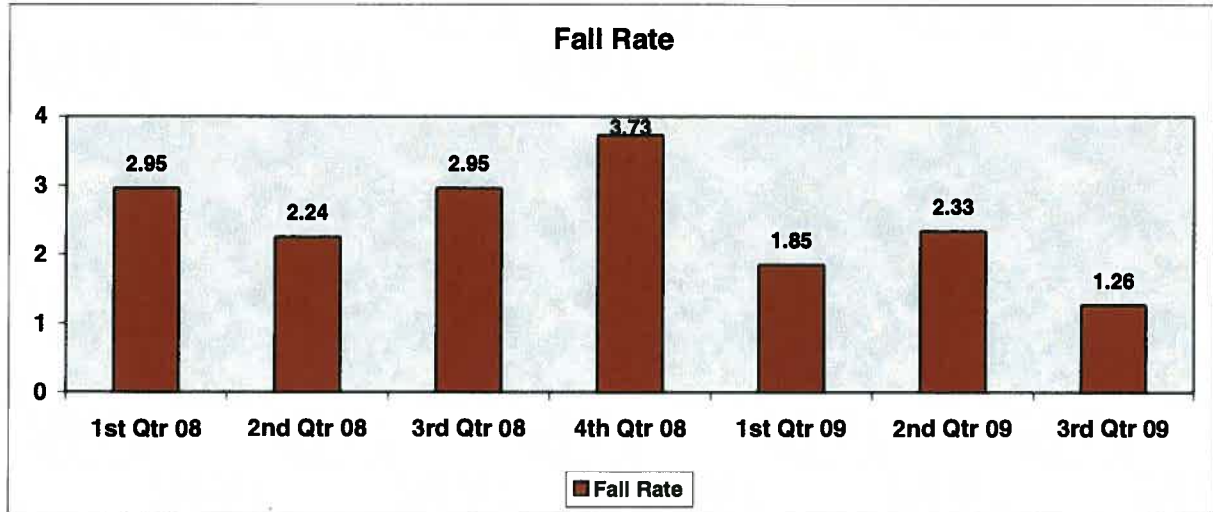
Goal	Discussion/Plan
Catheter Associated UTI- ICU	There was a demonstrated decrease in UTI catheter associated infections reported in the ICU from 2 nd to 3 rd quarter for 2009. The hospital remains well below the NISS benchmark.

Regulatory Compliance

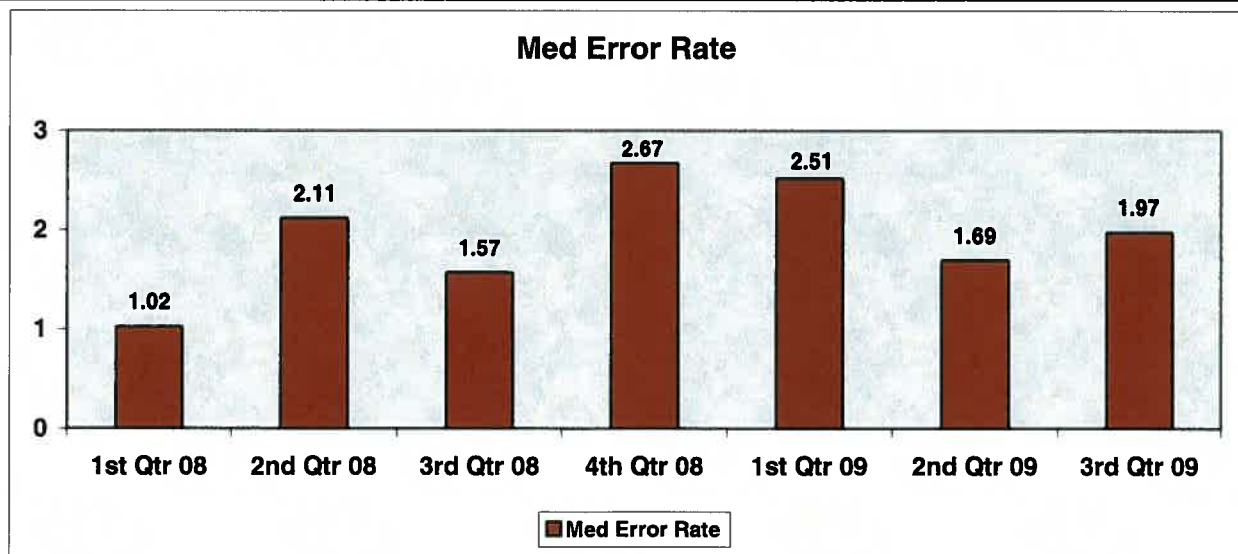
Regulatory Agency	Issue(s)	Status (Open or Closed)	Action Required
TJC (The Joint Commission)	None	NA	NA
CMS	None	NA	No issues this quarter
Bureau of Licensure	None	NA	No issues this quarter

Risk Management Measures

For the Risk measures, it is desirable for our performance to be below the upper limits



Issue	Discussion/Plan
<p>Patient Falls</p> <p>Numerator = number of falls</p> <p>Denominator = adjusted patient days</p>	<p>The fall rate is based on number of fall per 1000 adjusted patient days. The data for this period does not lend itself to analysis for particular days of the week, shift or unit.</p> <p>Action to be taken will be the more detailed review of QRRs with Beta and effective February, MIDAS will allow for an effective drill down to identify trends and causes.</p>



Issue	Discussion/Plan
<p data-bbox="367 306 583 333">Medication Issues</p> <p data-bbox="264 373 683 436">Numerator = number of medication errors</p> <p data-bbox="256 474 691 501">Denominator = total doses dispensed</p>	<p data-bbox="735 306 1450 369">The med error rate is based on number of doses dispensed as compared to number of errors.</p> <p data-bbox="735 409 1430 548">Action to be taken will be the more detailed review of QRRs with Beta and effective February, MIDAS will allow for an effective drill down to identify trends and causes.</p>